IMT Nuremberg Archives

H – 179

International Court of Justice

H0179 - 0002

395

Official Transcript of the International Military Tribunal in the matter of The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany on 12 July 1946, 1000-1700 Lord Justice Lawrence presiding.

THE PRESIDENT: The Tribunal will adjourn today at 4 o'clock.

Dr. Marx?

DR. HANS MARX (Counsel for defendant Streicher):

Mr. President, with the Permission of the Tribunal I shall now continue with the presentation of the final plea for the defendant Streicher.

Yesterday I had come to the point where the individual accusations against Streicher had been summarized, and I had taken the liberty of explaining that these accusations are subdivided into three different paragraphs:

1. Support of seizure of power and consolidation of the power of the NSDAP after the latter's entry into the government.

2. Preparation of aggressive wars by propaganda aimed at the persecution of the Jews.

3. Intellectual and spiritual preparation and education to encourage hatred against the Jews.

I continue now on page 4 of my German manuscript.

As regards Count I of the indictment, the defendant does not deny that as regards the Party's later seizure of power he supported and promoted it with all his might from the very beginning. His support went to the extent of a whole movement which he had built up personally in Franconia, and which he put at the disposal of Adolf Hitler's party, the latter being extremely small after the first world war and limited to southern Bavaria only. Furthermore, after Hitler's release from the fortress of Lansberg he immediately joined him again and subsequently championed his ideas and goals with the greatest determination.

Until 1933, the defendant's activity was limited to propaganda for the NSDAP and its goals, particularly in the field of the Jewish question.

H0179 - 0003

There is nothing criminal to be seen in this attitude of the defendant as such. The participation in a party within a state, which allows such an opposition party, can be regarded as criminal only if, first of all, the goals of such a party are objectively criminal, and if subjectively a member of such a movement knows, approves of, and thereby supports these criminal goals.

The foundation of the entire charges against all the defendants lies in this very fact, that the NSDAP is accused of having had criminal goals from the very beginning. According to the assertion of the prosecution, the members of this party started out with the plan of subjugating the world, of annihilating foreign races, and of setting the German master-race above the whole world. They are accused of having harboured the will to carry out these aims and plans from the very outset by means of aggressive wars, murder and violence.

If, therefore, defendant Streicher's mere participation in the NSDAP and his support of it are to be ascribed to him as a crime, it must be proved that the party had such plans and that the defendant knew and approved of them.

H0179 - 0004

The gentlemen who took the floor before me have already demonstrated sufficiently that such a conspiracy with such aims did not exist. Therefore I can save myself the trouble of making further statements on this subject and I can refer to what has already been set forth by the other defense counsels. I have only to deal with the point that the defendant Streicher did not in any case participate in such a conspiracy, if the latter should be considered by the High Tribunal to have existed.

The official party program strove to attain power in a legitimate way. The aims advocated therein cannot be considered as criminal. Thus, if such aims did actually exist, they could only -- given the nature of a conspiracy -- be known in a restricted circle.

The party program was not kept secret, but was announced at a public meeting in Munich, so that not only the whole public of Germany but also that of the entire world could be informed about the aims of the party.

Therefore, there is a complete absence of that momentum given by the secret agreement in a common aim, which is usually the characteristic sign of a conspiracy.

The hearing of evidence, too, has shown nothing to the effect that at that time already there existed a plan for a war of revenge or aggression, connected with the preceding of simultaneous extermination of the Jews. If nevertheless a conspiracy should have existed, the latter would have confined itself to the narrow circle which revolved exclusively around Hitler. But the defendant Streicher did not belong to this circle. None of the offices he occupied provides the leastfoothold for it. As an old party member he was just one among many thousands. As honorary Gauleiter, as honorary SA-Obergruppenfuehrer, he was also only an equal among equals. Thus one cannot find in any of the offices he held any link or entanglement with the innermost circle of the party. It is also impossible to discern after the end of 1938 any personal relations with the leading men of the movement, be it with Hitler himself, be it with the defendant Goering, be it Goebbels, Himmler or Bormann.

The prosecution did not offer any evidence on this point, nor did the proceedings produce any proof to that effect. Of all the material presented during all these months of the Trial, nothing can be taken even as a shadow of a proof that the defendant Streicher was so closely connected with the

H0179-0005

highest authority of the party that he could have or even must have known its ultimate aims.

The final aims of the N.S.D.A.P. in the Jewish question -- the effects of which were manifest in the concentration camps -- had not been formulated and fixed the way they appeared in the end, neither before the seizure of power nor several years after. The party program itself provided for the Jews to be placed under a law for aliens, thus the laws issued in the Third Reich followed this line. Only later on, it can be said here, theprogram became more severe and finally came head over heels under the influence of war. But any proof of the fact that the defendant Streicher recognized other aims than those of the official party program has not been offered.

Accordingly, it has not been proved that the defendant being aware of the criminal aims of the party supported the seizure of power of the NSDAP, and only on such a basis could a penal charge be brought against him.

The fact that the defendant, as Gauleiter, further endeavored to increase and maintain the power of the NSDAP after the seizure of power, is also not disputed by him. But here, too, only if the defendant knew at that time the objectionable aims of the party, can his conduct be considered punishable.

From the purely factual standpoint it must be said here that the defendant Streicher, contrary to almost all other defendants, did not remain in his position until the end, not even until the war. Officially, he was dismissed in 1940 from his position of Gauleiter, but actually and practically he had been without any influence and power for more than a year. But while he could still work within the modest framework which was at his disposal in his capacity of Gauleiter, no criminal plans of the NSDAP were recognizable. In any case not for somebody, who like the defendant Streicher was outside the close circle surrounding Adolf Hitler.

Count II of the indictment brought against the defendant Streicher, namely the persecution of Jews as a means of preparation for a war of aggression, can be included here. Up to 1937 the existence of a plan for a war of aggression was absolutely not noticeable. In any case, if Hitler should have entertained an intention to that effect, he did not let it be known to the outside. If, however, anybody should have been taken into his confidence at that time it would have been the leading men in politics and the Wehrmacht,

H0179 - 0006

who belonged to the closest circle around him. However, by no means did the defendant Streicher belong to those. Especially significant is here, that at the outbreak of the war Streicher was not even appointed Wehrkreiskommissar of the Gau (Commissioner of military administrative area HQ). The individual conferences, from which the prosecution derives the evidence for the planning of the war which occurred later on, did not see the defendant Streicher as a participant. His name does not appear anywhere, neither in a written decree, nor in a protocol. Consequently, no proof has been offered that Streicher knew of any alleged plans for waging war.

But this eliminates the reproach that he preached hatred against the Jews, in order to facilitate thereby the conduct of the war planned for some time after.

In this connection the following is to be said:

One of the main points in the program of the NSDAP has been the call "away from Versailles." The defendant adopted this program-point which, however, does not mean that he expected to do away with the Treaty by means of a war.

The former German democratic governments, in the course of their negotiations with former opponents from the world war also stressed the fact at all times that the Versailles Treaty is no proper basis for a permanent world peace and particularly for an economic adjustment. Not only in Germany but everywhere in the entire world, the attitude of clear thinking economic circles toward the Versailles Treaty was to reject it. We may point especially to the United Statesof America as an example.

All German political parties in Germany, irrespective of their other aims, concurred in the opinion that the Treaty of Versailles should be revised. Neither was there any doubt that such revision was possible only on the basis of a new agreement. Even to consider any other possibility of a solution would seem like Utopia, since the German Reich lacked all military power. The N.S.D.A.P. stove, at any rate so far as the outer signs indicated, to find a solution to the problem in just this way. The supporting of such aim, however, cannot be looked upon as a violation of treaty obligations, and made the object of a charge against the defendant. No proof has been offered that he expected military complications and that he desired them. I am about

H0179-0007

to take up the matter of the defendant's attitude in the Jewish question. He is accused of having incited and instigated through decades the persecution of the Jews and of being responsible for the final extermination of Europe's Jewry.

It is clear that this accusation constitutes the focal point of the indictment against Julius Streicher and perhaps of the total indictment, for in this connection the position of the German people to this question must be tried and judged as well.

H0179 - 0008

The Prosecution takes the point of view that there is just as little doubt as to the responsibility of the defendant, as there is doubt about the guil involvement of the German people. As evidence the Prosecution brought up :

a) The speeches by Striecher before and after the seizure of power, namely one speech in April 925, in which he spoke about the extermination the Jews. In the Prosecuter's opinion this is altogether the first evide regarding the final solution of the Jewish question planned by the Party, namely the extermination of all Jews, is to been in these speeches.

b) Active commitment of the personality and authority of the defend namely on the boycott-day on April 1, 1933.

c) Numerous articles published in the weekly "Der Stuermer", amon them especially such dealing with the ritual murder and with quotations fr the Talmud. He knowingly and intentionally described in them the Jews as a criminal and inferior race and created and wanted to create hatred and the will to annihilate this people.

The defendant's reply to these points is as follows:

He states that he worked in the capacity of a private writer only.

His aim was to enlighten the German people, on the Jewish question, as he saw it. His description of the Jews merely had the purpose to show that t are different and of a foreign race and to make it clear that they are living according to laws alien to the German conception. It was by no mea his intention to incite and instigate his listeners and readers. Besides, he only propagated the thought that the Jews should be extricated from the German national and economic life and eliminated from the close associatio with the body of German people.

He had further, an international solution of the Jewish question in mind, he thought nothing of a German or even European part-solution and re jected it. So it happened that he suggested in an editorial of the Stuer of 1941 that the French Island of Madagascar should be taken into conside- ration as a settlement area for the Jews. Accordingly, he did not see th final solution of the Jewish question in the physical extermination but in the resettlement of the Jews.

It cannot be the aim of the Defense to go into further details of th defendant's actions as journalist and speaker, namely regarding his Stuer and his answer to the accusations lodged against him. His ideology and a titude shall likewise

H0179-0009

remain unexplained, unexcused or defended, also his way of wirting and speaking. The examination and decision in this respect is the Tribunal's duty exclusively. That much may be said, that there is a gap between the defendant's actions and the expressions frequently employed by him which cannot be bridged. It can be stated that the defendant when assigned to take charge of some antisemitic enterprise never let coercive measures prevail against the Jewish population, as might necessarily be expected of him, if the accusations made by the Prosecution were ture.

I consider my duty as defense counsel in examining and clarifying the question of whether the defendant Streicher with his speeches, actions, and with his publications, not only strove for, but actually attained the success claimed by the Prosecution.

In the following the question should be examined, therefore whether Streicher actually educated the German people for antisemitism to a degree which made it possible for the leadership of the German people to commit such criminal acts as actually occurred.

Furthermore, it must be examined whether the defendant filled the German youth with hatred against the Jews to such an extent as charged by the Prosecution.

Finally, it must be examined whether Streicher was actually the man who prepared spiritually and morally the executive organs of the persecution of the Jews to commit that act.

At the beginning of this presentation it seems important to point out that a great many Stuermer articles from which the Prosecution endeavors to deduce an invitation to extermination and annihilate the Jews were not written by Streicher himself, but by his collaborators, especially by the deputy Gauleiter Karl Holz, well known for his extremely radical tendencies.

Even though the defendant Streicher carries the formal responsibility for these articles, which responsibility he expressly assumed before the Tribunal, this point of view still appears very essential for the extent of his criminal responsibility.

Further it may be said in this connection that according to the unrefuted statement of the defendant, the sharpest articles were written in reply to articles and writings in the foreign press, which contained very radical

H0179 - 0010

suggestions of destruction against the German nation. Also, no doubt, it was due to the existing war psychosis.

The defendant Streicher, -it cannot be denied and is not to be defend continually wrote articles in the Stuermer and also held public speeches, wh were strongly anti-Jewish and which at least aimed at the elimination of Jewi influence in Germany.

During the first 5 years Streicher found a comparatively favorable soil for his anti-Jewish tendencies. The first world war finished with Germany's defeat but wide circles did not want to admit the fact of a military victory Germany's opponents of that time. They imputed this defeat to a decompositi of the national will of defense and resistance from within, and designated Jewry as being the main culprit for this undermining from within. In doing s one intentionally overliiked the errors which had been committed by the Gover ment of that time before and during the war with respect to domestic and fore policy as well as the errors of strategy.

A scpae goat was sought on which to blame the loss of the war and one believed to have found it in the Jews. Jealousy, envy and also forgetfulness of one's own insufficiencies accomplished the rest in order to influence unfavourably the feelin s towards the Jewish population. In addition to that the inflation occurred and in the following years the economic depression wit its steadily increasing misery, which, as experience shows, makes any nation ripe for any form of radicalism.

On this round and from this medium arose the "Stuermer". For these rea sons it met with a certain amount of interest and attracted a considerable number of readers, at the beginning. But even during the last years before the accession to power it did not have a great influence. Its distribution did not go beyond Nuernberg and its close vicinity. By means of attacks against personalities locally known in Nuernberg and in the other places, it manages to aro se in these localities from time to time a certain amount of interest and to extend thereby its circle of readers. Certain groups of the population were interested in the propagation of such scandal stories and for these reasons subscribed to the "Stuermer".

But a criminal way of action can be seen in this -and this is probably the conception of the prosecution also- only if this sort of literary and

H0179 - 0011

oratory activity led to criminal results. But was the German nation really filled with the hatred of the Jews in the sense and to the extent asserted by the prosecution through the "Stuermer" and through Streicher's speeches.

The Prosecution produced the evidence on this point in a very brief manner. It draws conclusions but it has not produced actual evidence. It alleges indeed the achievement of a result, but it cannot produce factual evidence for its assumption.

The prosecutor maintained that without Streicher's incitements which lasted for years, the German people would not have approved the persecution of the Jews and that Himmler would have not found among the German people any tool for the execution of the measures taken for the extermination of the Jews. Should however the defendant Streicher be made legally responsibl for this, then not only must it be proved that the incitement as such was actually carried through and that a result was achieved in this direction but- and this is the decisive point - a conclusive proof must be produced that th facts exposed can be traced back to the incitement. It is not the question of the result obtained which has first to be proved with such accuracy, but the causative connection between incitement and result.

But how is the influence of the "Stuermer" upon the German people to be estimated, and what picture do we get when we look at the Jewish problem during the years between 1920 and 1944 ?

It is easy to recognize here three stages of development.

The first period comprises the interval in the defendant's activity between 1922 and 1933; the second that between 1933 and 1 September 1933 or February 1940; the third that between 1940 and the collapse.

As regards the first period, it would show a consi erable lack of appreciation of the tendencies which had already existed in Germany for a long time, and thereby a completely groundless exaggeration of Streicher's influence

if no mention were made of the fact that long before Streicher there was already a certain anti-semitism in Germany. For instance a certain Theodor Fritsch touched on the Jewish question in his publication "Der Hammer" long before Streicher's time and referred especially to the alleged menace offered by the immigration of Jewish elements from the East which might overflow the country and acquire too much control in it.

Immediately after the end of the first world war the so-called "German-Ethnic Protective and Defensive League (Deutsch-Voelkische Schutz und Trutz-bund)" appeared which, in contrast to the "Stuermer" and the movement brought into existence by Streicher, was spread over the whole of Germany and had set up as its aim the repression of the Jewish influence. Long before Streicher, antisemitic groups existed in the South as well as in the North. In relation to these large-scale efforts, the "Stuermer" could only have a regional importance. For this reason alone, it is easy to explain why its influence we never at any time or in any place of great importance.

It is a decisive fact however that the German nation in its totality coul not be influenced by all these groups either in its business relations or in i attitude to Jewry and that even during the last years before the NSDAP came to power no violent actions against the Jews occured anywhere of the people's own volition.

However, when towards the end of the second decade after the first world war a considerable gain of the NSDAP became noticeable, it was not due to anti-semitic reasons, but to the fact that the prevailing confusion in the various parties had been unable to show a way out of the ever increasing economic misery. The call for a strong man became ever more urgent. The conviction became more and more compelling among the broad masses that only a personality who would not be dependent on the change of majorities would be able to master the situation.

The NSDAP understood how to exploit this general trend for its own ends and to win over the nation who had sunk in despair by disseminating promises i all directions. But never did the masses think when electing the NSDAP at that time, that their program would develop in such a way as we have witnessed.

H0179 – 0012

H0179 - 0013

With the accession to power by the NSDAP in 1933, the second epoch was introduced. The power of the state was in the hands of the party and nobody could have prevented the use of violence against the Jewish circles of the population.

Thus it should have been just the right moment for the defendant Streich to effect his baiting as the prosecution has maintained. If at that time wid circles of the people, or at least the veteran members of the NSDAP, had been brought up as radical Jew haters, as stated by the prosecution, acts of violence against the Jewish population should necessarily have taken place on a greater scale, due to the accumulation of that mood of hatred. Pogroms of th greatest scope would have been the natural result of a truly anti-semitic attitude of the people. But nothing like that happened. Apart from some mi incidents, evidently caused by local or personal conditions, no attacks agai Jews or their property took place anywhere.

It is quite clear that an atmosphere of hatred against the Jewish peopl did not prevail anywhere at least up to 1933, and the charge brought by the prosecution against the defendant that he successfully educated the German people to hate the Jews ever since the very start of his fight, can thus be dropped. The year of the seizure of power by the NSDAP also put the "Stuerme to a decisive test. Had the "Stuermer" been considered by the broad masses the German nation as the authoritative champion against the Jews and therefor indispecsable to that fight, an extraordinary increase in the demand for the publication would have followed. No such interest was displayed, however, i any way. On the contrary, even in party circles demands were heard to discontinue the "Stuermer" entirely or at least to change its illustrations, st and tone. It became more and more clear that the interest in Streicher's Jewish policy was steadily declining, an interest which was limited anyway.

It must be added that with the seizure of power by the party the total press apparatus got under the control of the party, which immediately undertook to coordinate the press, i.e. to direct it from a central agency in the spirit of a national-socialist policy and ideology. This was done through th

H0179 - 0014

Price

Minister of Propaganda and chief of the Reich Press via the official "National Socialist party correspondence". Particularly Dr. Goebbels, the Minister of Propaganda, designated by different witnesses such as Goering, Schirach, Neurath, and others, as the most inveterate representative of the anti-semitic trend in the government, was credited with giving each week to the entire press several anti-Jewish editorials, which were printed by more than 3000 newspapers and magazines. If we realize that Dr. Goebbels in addition was making broadcasts in an anti-semitic spirit, we don't need any further explanations for the fact that the interest in a onesided antisemitic journal should disappear, and that did in fact happen.

It is particularly significant that at that time it had been repeatedly suggested to forbid "The Stuermer" altogether. This is brought out clearly in the testimony of Fritsche as a witness on 27 June 1946, who stated in addition that neither Streicher nor the "Stuermer" had any influence in the Ministry of Propaganda and that the paper was considered to a certain extent as non-existent.

It might have been for the same reason that the "Stuermer" was not even declared as a press organ of the NSDAP, and was not even entitled to bear the party's insignia. It was considered from the viewpoint of party and state administration, contrary to all papers which were held to be of any significance, as a private paper belonging to a mere private writer.

The firm which published the "Stuermer" and which belonged at that time to a certain HAERDEL, was not inclined, however, to accept so simply the shrinking circle of its readers, for it was now aided by the fact that Streicher had become the highest political leader in Franconia, and it knew how to make the most of this circumstance. Already at that time pressure was exerted on many sections of the population to the effect that they should prove their loyal political attitude and trustworthiness by taking out a subscription to the "Stuermer". The witness Fritsche has also pointed out this circumstance and has stated that many Germans only decided to subscribe to the "Stuermer" because they thought it would be a means of paying the way for their intended membership in the party. In order not to give a false impression of the number of

H0179 - 0015

editions of the Stuermer during the years 1923 to 1933, the following analysis will show the different stages of its development.

In the years 1923 to 1933 the Stuermer was able to increase its circulation from some 3,000 to some 10,000 copies, and this went up again to some 20,000 shortly before the seizure of power. On the average, however, between 1923 and 1931 the publication could only claim some 6,000 copies. With the transfer of power, by the end of 1934 it had reached an average of some 28,000 copies. It was only in 1935 that the publishing firm of the Stuermer became the property of the defendant Streicher, who, according to his statement, bought it from the widow of the previous owner for 40,000 RM, not a very large sum. From 1935 on the management of the firm was taken over by a professional, who succeeded by clever technical propaganda in increasing the number of copies to well over 200,000 and this figure was later surpassed in ever increasing proportion until it reached more than the double. The relatively low number of copies of the Stuermer up to the beginning of 1935 shows that despite the party's rise to power, popular interest in the Stuermer was present only in a minor degree. The extraordinary increase in the circulation which began in 1935 is to be traced back to the adroit propaganda methods already mentioned, which were employed by the new director Fink. The use of the Labor Front declared in the proclamation of Dr. Ley in No. 36 of the Stuermer of 1935 and which, Mr. President, I have taken the libertyof submitting, and the acquisition thereby of many thousands of forced subscribers must be ascribed to the personal relations of the manager with Dr. Ley.

In that connection I, furthermore, refer to a quotation from the Pariser Tageblatt of 29 March 1935 which is printed in the Stuermer copy of May 1935. Here, too, it is stated that the increase of the Stuermer circulation cannot be ascribed to the desire of the German people for such kind of spiritual food. It is neither presumably nor probably in any way, that the subscriptin to the Stuermer, forced on the members of the Labor Front in such a manner, could have actually turned the subscribers into readers of the Stuermer and followers of its way of thinking. On the contrary, it is well known that bundles of Stuermer copies in their original wrappings were stored in cellars

H0179 - 0016

and attics and that they were brought to light again only when the paper shortage became more acute.

When, therefore, the defendant Streicher wrote in his paper in 1925 - Document No. GB 169 - that the 15 years work of enlightenment of the Stuermer attracted to National Socialism an army of a million of "enlightened" members, he did claim a success for which there was no foundation whatsoever. The men and women who joined the party after 1933 did not apply for membershi as a result of the so-called enlightenment work of the Stuermer, but either because they believed the party's promises, hoping to derive advantages from it, or, as the witness Severing expressed it, because by belonging to the party they wanted to insure themselves against political persecutions.

The sympathy for the party and its leadership very soon decreased considerably. Also the defendant Streicher, lost authority and influence in an ever increasing measure even in his own district of Franconia, at least from 1937 on. The reasons herefore are sufficiently known.

Toward the end of 1938 he saw himself deprived of practically all political influence even in his own district. The controversy between him a Goering ended with the victory of the latter. Hitler, upon the urgent requ of the defendant Goering, had dropped Streicher completely, asthe Commander i Chief of the Luftwaffe at that time was naturally more important and far more influential than Gauleiter Streicher. The defendant even had to tolerate that the aryanisation carried out in the district of Franconia was being re-examined for its correctness by a special commission sent by Goering. In th course of the year 1939 Streicher was completely pushed aside and was even forbidden to talk in public. At the outbreak of the war, in contrast to all other Gauleiters, hewas not even appointed to the position of Wehrkreiskommis of his own district.

During the last phase, in the years of the war, the defendant Streicher had no political influence whatsoever. As of February 1940 he was removed from his position as a Gauleiter and lived on his estate in Pleikershof, cut off from allconnections. Even party-members were forbidden to visit him the From the end of 1938, he had no connections whatsoever with Hitler, by whom he had been completely abandoned from that time on.

H0179 - 0017

In what way now did the "Stuermer" exert any influence during the war period?

It can be said that during the war the "Stuermer" aroused no considerable attention any more. The grimness of the time, the anxiety for relatives on the front, the battles at the front, and finally the heavy air attacks, completely diverted the German people's interest from questions dealt with in the"Stuermer". The people were fed up with the continuous repetition of the same assertions. The best proof of how little the "Stuermer" was desired, as reading matter is ascertained by the fact that in restaurants and cafes the "Stuermer" was always readily available at the new stands, whereas other papers and magazines were forever taken up.

The circulation total decreased steadily and irresistibly. The influence of the "Stuermer" in the political sphere became nonexistent. During the already mentioned periods the "Stuermer" was being rejected by large circles of the population from the very start. There can be no idea of the exertion of an influence by the "Stuermer" upon the German people or even upon the party. Its crude style, its often pornographic illustrations and its onesidedness aroused manifold displeasure.

Although the German people, for years, had been practically deluged with Nazi propaganda, or rather because of that very fact, a journal such as the "Stuermer" could exert no influence upon its inner attitude.

Had the German people - as is maintained by the prosecution by the prosecution - actually been saturated with the spirit of racial hatred, other factors certainly would have been far more responsible for it than the "Stuermer" and would have contributed far more essentially to a hostile attitude towards the Jews.

But nothing of such nature can be established. The general attitude of the German people was not anti-semitic, at any rate not in such a sense or to such a degree that they would have desired or approved of physical annihilation of the Jews. The official Party propaganda in regard to the Jewish problem had exerted no influence upon the broad masses of the German people and it had not educated them in the direction desired by the State leadership.

H0179 - 0018

This can readily be ascertained from the fact that it was necessary to decree of number of legal regulations in order to segregate the German population from the Jewish. The first example of this is the so-called Law for the Protection of German Blood and Honor of September 1935, by the provisions of which any racial intermingling of German people with sectors of the Jewish population was subjected to the death penalty. The passing of such laws would not have been necessary, had the German people been predisposed to an anti-semitic attitude, for they would then of their own accord have insisted upon a segregation from Jews.

H0179-0019

The law for the elimination of Jews from the German economic life, promulgated in November 1938, is running a long the same line. In a people hostile towards the Jews, any trade with Jewish circles would have necessarily ceased and their business would have automatically come to a standstill.

In reality, however, the intervention of the state was required to eliminate Jewry from the economic life.

The same conclusion can be drawn from the reaction of the greater part of the German populace to the demonstrations carried out against the Jews during the night from 9th to 10th November 1938.

It is proven that these acts of violence were not committed spontaneously by the German people but that they were organized and executed with the aid of thestate and party apparatus upon instructions of Dr. Goebbels in Berlin.

The result and the effect of these demonstrations directed by the state, which in a cynical way were portrayed abroad as an expression of indignation of the German people over the assassination of the secretary of the Embassy in Paris, vom Rath, was a totally different one, than had been visualized by the originators of this demonstration.

These acts of violence and excesses, based upon the lowest instincts, were unanimously rejected in the circles of the party and even of its leadership.

In place of creating hostility towards the Jewish population they roused pity and compassion with their fate.

Hardly any other measure taken by the NSDAP was ever rejected in such a way on all hands. The effect upon the public was so incisive that the defendant Rosenberg in his capacity of "Gauleiter" found it necessary to make an address in Nurnberg, warning against an exaggerated sympathy for the Jews. According to his deposition he did not do this because he approved these measures but only in order to strengthen by his influence the heavily impaired prestige of the party.

Previously, as it follows from the testimony of the witness Fritz Herrwerth examined here, he refused to SA-Obergruppenfuehrer v. Obernitz to take part personally in the planned demonstration and designated the

H0179 - 0020

latter as being useless and prejudicial. He publicly expressed this standpoint later also, during a meeting of the League of Jurists at Nurnberg. In doing so he took the risk of placing himself in an open opposition to the official policy of the State.

All these facts show that despite the anti-Jewish propaganda carried on by the Government, an actual hostility against the Jewish population did not exist in the people itself. Thus it is proved already that neither Streicher's publications in the "Stuermer" nor his speeches had a provoking effect upon the German people in the sense upheld by the prosecution.

Therefore the proof for an incitement to the hatred of Jews, successfully carried out and leading to a criminal end, cannot be furnished by pointing to the general attitude of the Germannation. But the prosecution has supported its reproach to that effect by the specific assertion that only a nation educated to the absolute hatred of Jews by men like the defendant could approve of such measures like the mass extermination of Jews. Thereby the reproach is made to the totality of the Germans that they knew about the extermination of the Jews and they approved of it, a reproach, the severity and consequences of which upon the whole future of the German nation cannot be estimated at all.

But did really the German nation approve of these measures?

Only an occurrence which is known can be approved of. Therefore, should this assertion of the prosecution be considered as proved, logically it must also be considered as proved that the German nation actually knew of these occurrences.

However, the hearing of evidence to that effect has shown that the Reichsfuehrer SS Himmler, charged with the mass assassinations by Hitler, and his close collaborators, have surrounded this whole story with the veil of deepest secrecy. By threatening with the most severe punishments any violation of the absolute commandment of silence which was imposed, they managed to lower before the events in the East in the extermination camps, an iron curtain which hermetically shut off these facts from thepublic.

Hitler and Himmler prevented even the corps of highest leaders of party and state from gaining any insight and information. Hitler didnot hesitate to supply with false informations even his closest collaborators like Reich

H0179-0021

Minister Dr. Lammers, who was heard here as a witness, and tomake him believe that the removal of the European Jews to the East meant their settlement in the Eastern territories and by no means their extermination. Although the statements of the defendants may deviate in many points, yet in this connection they all agree so completely one with the other and with the statements of other witnesses, that the veracity of their testimonies simply cannot be questioned. If it was not even possible for the defendant Frank in his capacity as Governor General of Poland to get through to Auschwitz, because without Himmler's special consent he himself was denied entrance, then this fact speaks for itself.

If, however, even the leading personalities of the Third Reich with the exception of a very small circle were not informed and if even they had at best very vague informations, then how could the public at large have known it? Under these circumstances the possibilities for finding out what was going on in the camps were extremely scanty.

For the majority of the people, foreign news eliminated as a source of information. Listening to foreign radio stations was threatened with the heaviest penalties and therefore did not take place. And when it did, the news broadcast by foreign radio stations concerning events in the East were, however or rather because they corresponded to facts, so coarse, so horrible beyond any human understanding, that they were bound to appear to any normal individual, and in fact did, as intentional propaganda.

On the whole, Germany could gain knowledge of the extermination measures against Jewry only from people who either were working in the camps themselves or came in contact withthe camp or its inmates, and, lastly, from former concentration camp inmates.

There is no need to explain that members of the camp personnel kept silent, not only because they were strictly compelled to do so, but also in their own interest. Furthermore, it is known that Himmler had threatened death penalty for any information about the camps, and that not only the actual culprit, but also his relatives, were threatened with this punishment. Finally, it is knows that the extermination camps proper were so

H0179 - 0022

hermetically cut off from any contact with the world that nothing concerning the events which took place therein could penetrate to the public.

The camp inmates who came into contact during their work with fellow-workers kept silence, because they had to keep silent. People who came to the camps were also under the threat of this punishment, inasmuch as they were at all able to obtain some insight, a thing which was all but impossible in the extermination camps.

From these sources, accordingly, a knowledge for the German people could not flow.

But the absolute order for silence was compulsory, to a still greater measure, for every concentration camp inmate who had been released. Anyhow, hardly anybody ever came back to life from the actual murder camps. But if, once in a time, a man or woman were released, the danger of their being sent back into the camp was hovering about them ifthey infringed on the order for silence, and this in addition to the other threatened punishments. And this renewed detention would have been tantamount to gruesome death.

It was therefore nearly impossible to learn from released concentration camp prisoners positive facts concerning the occurrences in the camps. This being the case with regard to normal concentration camps in Germany, it applied in a still greater measure to the extermination camps.

Every lawyer who, as I did, defended people before their detention in a concentrationcamp, and who was visited by them again after their release, will be able to confirm that it was not possible, even for a man holding such a position of trust and under the protection of a lawyer's pfofessional secret, to get former concentration camp inmates to talk.

If men such as Severing, who testified here, a Social Democrat of long standing who was highly trusted by his party comrades and who was, because of this, in touch with many former concentration camp inmates, came to know of the real facts connected with the extermination of the Jews but very late and even then to a very restricted extent, then such considerations ought to apply even more to any normal German.

H0179 - 0023

It can be derived with absolute certainty from these facts that the government, that Hitler and Himmler wanted under all circumstances to keep secret the genocide, extermination, of the Jews, and this forms the base for another argument -- in my opinion, a cogent one - - against the anti-semitism of the German people asserted by the prosecution.

If the German people had indeed been filled with such a hate against Jewry as the prosecution affirms, then such rigorous methods for secrecy would have been superfluous. On the contrary.

If Hitler had been convinced that the German nation saw in the Jews its principal enemy, that it approved of and desired the extermination of Jewry, then he would have been forced, of needs, to publish the plans for and likewise the accomplishment of the extermination of this very enemy. Under the sign of total war as constantly propagandized by Hitler and Goebbels, there would indeed have been no better means to strengthen the faith in victory and the will of the people to fight than the information that Germany's principal enemy, this very Jewish people, had already been annihilated.

An unscrupulous propagandist such as Goebbels certainly would not have failed to use such a striking argument if he could have taken as a basis the necessary presupposition, that is, the German people's determined will to exterminate the Jews.

However, the "final solution" of the Jewish question had by all means to be kept secret even from the German people who had, for years, stood under the hardest possible pressure by the Gestapo. Even leading persons of state and party were not allowed to learn of it.

It seems that Hitler and Himmler were themselves convinced that even in the midst of a total war and after decades of education and gagging by national socialism, the German nation and, above all, its armed forces, would have reacted most violently to the publication of such a policy against the Jews.

The policy of secrecy followed here cannot be explained by any consideration for enemy nations. In the years 1942 and 1943 the whole world was already engaged in a bitter war against national socialist Germany. An

H0179 - 0024

aggravation of this struggle hardly seemed possible, certainly not by publishing facts which had long since become known abroad. Aside from this, the consideration of making a still worse impression on the enemy countries could hardly influence men as Hitler, Goebbels and Himmler.

H0179 - 0025

If they would have counted even upon the smallest possible positive result of a publi ation of the genecide of the Jews, then they certainly would not have omitted such publications. On the contrary, they would have tried by all means to strengthen the faith in victory of the German people therewith. The fact that they have not done this is the best proof that even they did not consider the German people as radically anti-semitic, and it is the best proof too, that one cannot speak of such anti-semitism on the part of the German people.

Therefore, even had the defendant, with his publications, aimed at such an end the did not reach such a goal.

In this connection, light should be thrown upon the part attributed by the Prosecution to the defendant Streicher, that he had educated the German youth in an anti-semitic spirit and that he had sunk the poison of anti-semitism so deeply into the hearts of the youth that this pernicious result would make itself felt a long time after actual life yet.

What the defendant is mainly blamed for in this connection, reproach is to be seen in the fact that young people, due to the Streicher education in hatred toward Jews were supposed to have been ready to commit crimes against Jews, which otherwise they would not have committed and that youth thus educated might be expected to perpetrate such crimes in the future too,

The Prosecution here relies mainly on the juvenile books which were put out by the publishing house of the "Stuermer" and some announcements addressed to Youth which appeared in this paper.

Far be it from me to extenuate or defend these products. Evaluation of them can and must be left to the Tribunal. In accordance with the basic principle of the defense, the only question to be taken up here will be whether or not the defendant, in one way or another, influenced the education of Youth towards criminal hatred of Jews.

As far as the books which have been mentioned are concerned, it must be said that for the greater part German Youth did not know them at all, much less read them. No evidence has been produced to substantiate the contrary which is assumed by the Prosecution.

The healthy common sense of German Youth refused such stuff. German boys and girls preferred other reading material.

H0179 - 0026

It may well be emphasized here, that neither the contents of nor the illustrationstin these books could prove in any way attractive to youth. They were, of necessity much more likely to be avoided.

Of special importance in regard to this point is the fact that defendant Baldur von Schirach, the man responsible for the education of the whole body of German youth, as a witness declared under oath, that the mentioned juvenile books of the publishing company were neither circulated by the Hitler Youth leaders nor found a circle of readers among the Hitler Youth.

The witnessmade the same assertions for the "Stuermer". One of his closet co-workers, witness Lauterbacher, declared on this subject that the "Stuermer" was actually forbidden for the Hitler Youth by defendant von Schirach.

It is clear that the very style and the pictures of the Stuermer were not suited to attract the interest of young person or even to offer them ethical support. The measure taken by the Reich Youth leaders is therefore quite understandable.

If some of the "Stuermer" articles submitted by the Prosecution seem to indicate that the "Stuermer" was read in youth circles and there produced a certain effect, then it should be said on this point that typical works, that is, works ordered for propaganda purposes were concerned. No proof whatsoever has been furnished for the assertion of the Prosecution that Germa youth harbored criminal hate toward Jews.

THE PRESIDENT: Dr. Marx, perhaps this would be a convenient time to break off.

(A recess was taken).

H0179-0027

Accordingly, neither the German antion, nor its youth can be termed criminally antisemitic in the sense of the indictment, and so all foundation is taken from the charge made against the defendant Striecher that he educated the youth and the nation on these lines.

Now, one might be tempted to assume that the "Stuermer" exercised an especially great influence upon the organizations of the party, the SA and SS, but this was not the case either.

The SA, the largest mass organization of the party, rejected the Stuerme in the same way as the mass of the people did. Its publications were "The SA-Leader" and "The SA". From those, the mass of the SA drew the foundation of their ideology. These publications do not contain even one article, written by the pen of the defendant Striecher. If the latter had really been the man the Prosecution thinks him, the authoritative and most influential propagandist of anti-semitism, he would necessarily have been called in for collaboration in these publications, which were issued to instruct the SA on the Jewish question. A publication aiming at ideological education would never have been able to dispense with the collaboration of such a man.

The fact that Julius Streicher never once made an utterance of any kind in these papers, demonstrates again that the picture drawn of him by the prosecution does not correspond in any way with the actual facts. Through his own publication, the defendant Streicher could not gain any influence over the SA, and the columns of "The SA-Leader" and "The SA" were closed to him. Even the highest SA-Leaders declined to advocate his ideas. With regard to this the SA deputy chief of staff SA-Obergruppenfuehrer Juettner, made the following statement when he was heard as witness before the commission on 21 May 1946 :

"At a leader conference, the former SA chief of staff, Lutze, expressed his wish that there should be no propaganda for the "Stuermer" in the SA. In certain groups the "Stuermer" was even prohibited. The contents of the "Stuermer" disgusted and repelled most of the SA men. The policy of the SA with regard to the Jewish question was in no way directed at the extermination of the Jews; the fight aimed only at preventing a large scale immigration of Jews from the East."

H0179 – 0028

Thus the ideology of the "Stuermer" was rejected on principle by the individual SA man as well as by the SA leaders, and it is, therefore, out of the question to speak of any influence of Streicher upon the SA.

Not only was the defendant Streicher not asked to collaborate in SA publications, but his articles did not appear in any other newspapers and publications. Neither in the "Voelkischer Beobachter" nor in other leading organs of the German press, was he allowed to say a word, although according to the will of the Propaganda Ministry, enlightment on the Jewish question was supposed to belong to the noblest tasks of the German press.

Even otherwise, the defendant Streicher did not get any opportunity from the state leadership or the Propaganda Ministry, to impress his ideas upon a wider circle. The defendant Fritzsche, the man who had also the right of decision in the propaganda ministry, declared as a witness that Streicher never exerted any influence upon propaganda and that he was completely disregarded. Thus, in particular, he was not entrusted with broadcasting speeches, although just an address over the radio would have had an entirely different mass effect then an article in the Stuermer which necessarily affected only a limited circle. The fact that even the official propaganda of the Third Reich did not utilize the defendant Streicher, makes apparent that his activity would not have promised any effect, that in fact he did not exert any influence at all. The official German state government recognized Streicher as what he actually was, the unimportant publisher of a really unimportant weekly.

The fundamental attitude of the German people, as once more must be said with all clarity, was as little radically antisemitic as that of the German Youth and also that of the party organizations.
Any success in instigating and inciting to criminal antisemitism is therefore not proven.

I now come to the last and decisive part of the accusation, i.e., to the examination of the question : who were the persons mainly responsible for the orders given for the mass-extermination of Jews; how was it possible that men were found who were ready to execut these orders, and whether, without the influence of defendant Streicher, such orders would not have been given or executed.

H0179 - 0029

The main person responsible, for the final solution of the Jewish questi — the extermination of Jewry in Europe -- is without doubt Hitler himself. Though this greatest trial of all in world history suffers from the deficiency that the chief offenders are not sitting in the defendant's box because they are either dead or not to be found, the facts ascertained have, nevertheless resulted in cogent conclusions concerning the actual responsibility.

It can be considered as proved beyond any doubt that Hitler was a man of unique and even demoniacal brutality and disregard, whereto was added in the latter years that he had lost all sense of proportion and all sefl-control

Ruthless brutality was the principal feature of his character; this became apparent for the first time in its full force when the so-called Roehm Rebellion was suppressed in June 1934.

On this occasion Hitler did not hesitate to have his oldest fellow combatants shot without any process of law. His unrestrained radicalism was further revealed in the way the war with Poland was conducted. Only because he feared an antagonistic attitude toward Germany on the part of leading circles in the Polish nation did he order their ruthless extermination. His orders at the beginning of the Russian campaign were still more drastic. Already at that time he ordered the extermination of Jewry in separate actions.

These examples show beyond doubt that respect for any principles of humanity was alien to this man. Furthermore, the proceedings, through the depositions of all defendants, have corroborated the fact that Hitler in basic decisions was not open to any outside influence.

Hitler's basic attitude towards the Jewish question is known. He had already become an anti-semite during his time in Vienna in the years before the first world war. However no actual proofs exist that Hitler from the very beginning had such a radical solution of the Jewish question in mind as was finally effected in the annihilation of European Jewry. When the Prosecution declares that from the book "Mein Kampf" there was a direct road leading to the crematories of Mauthausen and Auschwitz, that is only an assumption, but no evidence for it has been given. The evidence speaks much rather for the fact that Hitler too wanted to see the Jewish problem in Germany solved by way of emigration. This thought, as well as the position of the Jewish part of the population under alien laws, was the official state policy of the Third Reich.

H0179 – 0030

Many of the leading antisemites considered the Jewish question as settled after the laws of 1935 had been passed. The defendant Streicher shared this opinion. A severer attitude of Hitler's in the Jewish question cannot be traced further back than to the end of 1938, or beginning of 1939. Only then it became apparent that, in case of war -which he believed was propagated by the Jews- he planned a different solution.

In his speech at the Reichstag on 30th January 1939 he predicted the extermination of the Jewry in case a second world war was let loose against Germany.

He expressed the same ideas in a speech made in February 1942, at the occasion of the 20th anniversary of the day the Party was founded. And finally also his testament confirms his exclusive responsibility for the murdering of European Jewry as a whole.

Though a severer attitude on the Jewish question had been taken up by Hitler since the beginning of the war, there is nothing that goes to show that he visualized the extermination of the Jews right at the beginning of the war. It can be clearly seen that this last resolution, no doubt, came about when Hitler, presumably as early as 1942, saw that it was impossible to brin the war to a victorious end for Germany.

It can be assumed almost with certainty that the decision for exterminating the Jews was made -as were almost all of Hitler's plans- and originated exclusively by himself. It can not be ascertained with certainty to what extent other, who were closely attached to Hitler, brought their infl ence to bear on him. If such influences did exist they can have only come from Himmler, Bormann and Goebbels. That much can be stated beyond any doubt at any rate that, during the decisive period from September 1939 to October 1942 Streicher -things being as they were- neither influenced Hitler nor woul have been able to influence him.

H0179 - 0031

At this time Streicher was living -- deprived of all his offices and completely left in the cold -- at his farm in Pleikershof. He had no connection with Hitler neither personally nor by correspondence. This has been proved beyond doubt by the statementsof witness Fritz Horrworth, Adele Streicher, and the statement under oath of the defendant himself. But that Hitler was instigated to his orders of wholesale murder by his reading of the Stuermer can, I believe, not be maintained in earnest.

So it has been made clear that the defendant Streicher had no influence at all on the man who made the decision and on the decisive order to exterminate Jewry.

In October 1942 Bormann's decree came out, ordering the extermination of Jewry (Document PS 3244). This order came from Hitler, there is no doubt about that, and went to Reichsfuehrer SS Heinrich Himmler, who was changed with the actual execution of the extermination of the Jews.

He, for his part, charged Chief of the Gestapo Mueller and his commissioner for Jewish Affairs Eichmann with the final execution. So, after Hitler, these three men are the main responsible ones.

That Streicher had any possibility of influencing them, or actually supposedly influenced them, hasnot been proved. He ascertains irrefutably that he never knew either Eichmann or Mueller, and thathis connection to Himmler was but loose and far from being friendly.

That Himmler was one of the most radical anti-Semites of the party need merely be mentioned. From the beginning he had advocated a merciless fight against the Jews, and was, moreover, from all that we know of him, not a man who would have allowed himself to be influenced by another in matters of principle. But aside from that, a comparison of the two personalities shows, a priori, that Himmler was in every way the stronger and more superior man, so that even for this reason the exertion of any influence by defendant Streicher on Himmler may be ruled out.

I believe I may refrain from further illustration of this point.

I now come to the question whether the activity of the defendant Streicher had a decisive influence on the men actually executing the orders; that is, on the one hand on members of special purpose groups (Einsatzgruppe and on the other hand on the executive commandos in the concentration camps and whether it was at all necessary to prepare these men spiritually and intellecutally to make them willing to execute such measures.

H0179 - 0032

The Reichsfuehrer SS stated unequivocally in his speeches in Nikolajew, Posen and Charkow -- which have often been mentioned here -- not only that he, with Hitler, was responsible for the final solution of the Jewish question, but also that the execution of the orders had been possible only by the utilization of forces selected by himself among the SS.

We know from Ohlendorf's testimony that the so-called Einsatzgruppen (Task force) consisted of members of the Gestapo and the SD, of companies of the Waffen SS, of members of the police force withlong years of service, and of natives.

It must be stated as a matter of principle that the defendant Streicher never had the slightest influence on the ideological attitude of the SS. There is no shadow of a proof among the extensive material of evidence of this trial that Streicher had any connections with the SS. The alleged enemy No. 1 of the Jews, the great propagandist for the persecution of the Jews, -- as he has been pictured as the prosecution -- the defendant Streicher, never having had the opportunity to write in the periodical "Das Schwarze Korps" (The black Corps) or even in"SS-Leithefte (SS-Guide Magazine). These periodicals alone, however, as the official mouthpieces of the Reichsfuehrer SS, determined the ideological attitude of the Schutzsaffel. These SS periodicals determined their attitude toward the Jewish question. In these circles the Stuermer was read just as little as in othercircles; it was rejected.

Himmler himself rejected Streicher ironically as an ideologist. Therefore, the defendant Streicher could not have influenced ideologically the SS members of the Einsatzgruppen, far less the old soldiers of the police, and least of all the foreign units.

Also, the execution squads in the concentration camps could not be ideologically determined by him. Those men originated for the most part from the Totenkopfverbaende (Death Head Units), that is, the old guard units, for whom the above mentioned is true in a higher degree. Added to this is the fact that the experienced police soldiers, as well as the SS men with long years of service, were trained in absolute obedience to their leaders. Absolute obedience to a Fuehrer command was a foregone conclusion for both.

H0179 - 0033

Even those experienced police men, accustomed to absolute obedience, even the experienced SS, could not be, without any more ado, entrusted by Himmler to carry out the executions of Jews. Rather, Himmler had to select men whom he trusted as heads of these execution squads and make them personally responsible for their duties. He pointed out explicitly that he would take all responsibility and that he himself did not but pass on a definite order of Hitler.

So little did even these men, who were supposed to be, according to the assertion of the Prosecution, the Elite of the Nazism become enemies of the Jews in the sense as asserted by the indictment, that the entire authority of the head of State and the Fuehrer, and of his most brutal follower, Himmler, was necessary to force upon the men responsible for carrying out the execution orders the conviction that their order was based on the will of the authoritarian head of the State; an order which, according to their conviction, had the power of a fundamental State law and therefore was above all criticism.

Thus it was not ideological reasons, not Streicher's instigation of those who were, as the prosecution contends, commissioned with the carrying out of annihilation thatmade these men carry out orders, but exclusively and solely the obedience to an order from Hitler transmitted to them by Himmler, and the knowledge that not to carry out a Fuehrer order, meant death.

Thus, in this respect too, Streicher's influence has not been proved.

The accusations brought against the defendant by theprosecution are herewith exhausted. But, on order to reach a conclusion, to form a judgment of the defendant that does full justice to the actual findings, it seems necessary to give once more a short summary of his personality and his activity under the Hitler regime.

The prosecution considers him to be the leading anti-Semite and the leading advocate of the most violent determination to annihilate Jewry.

This conception, however, does no more justice to the role of the defendant and his actual influence than it does to his personality. The manner in which the defendant was used in the Third Reich and called in for the propagandizing and for the final solution of the Jewish question

H0179 - 0034

shows the incorrectness of the conception held by the prosecution. The only time the defendant was called upon to take an active part in the fight against Jewry was in his capacity as chairman of the action-committee for the anti-Jewish boycott-day on 1 April 1933. He showed an attitude on that day which stands in direct contrast to his utterances in the Stuermer. One can see from it that the utterances in his paper which are under scrutiny were purely for the purpose ofcreating a tendency. In spite of the fact that on that day he could haveused the entire power of the State and of the Party against Jewry, he merely orderedthe identification of Jewish places of business and the guarding of Jewish business places. In connection with this he gave explicit instructions that any molestation or act of violence against the Jews, as well as damaging of Jewishproperty, was forbidden and punishable.

In the time which followed no further use at all was made of the defendant. Not even for the ideological founding of the show-down with Jewrr was he consulted. Neither through the press nor over the radio could he express his ideas. Neither the Party in its training letters (Cchulungsbriefen), nor the organizations in their periodicals, availed themselves of his pen for the clarification of the Jewish question.

Hitler did not charge him, but the defendant Rosenberg, with the ideological training of the German people. The latter was responsible for the Institute for the Investigation into the Jewish Question, but the defendant Streicher; he wasnot even contemplated as collaborator in this Institute. The defendant Rosenberg was commissioned with the arrangement of an Anti-Jewish congress in 1944. This assembly, however, never took place, but it is significant that the participation of the defendant Streicher was not even planned.

The entire anti-Jewish laws and decrees ofthe Third Reich were drafted without his participati n. He was not even called in for the drafting of the race laws which were proclaimed at the party rally in Nurnber in 1935. The defendant Streicher did not take part in any conference concerning questions of some importance during peace and war. His name is not on any list of participants, on any protocol. Not even in the actual discussions is his name mentioned once.

H0179 - 0035

The fight against Jewry in the Third Reich became more severe from year to year, especially after the outbreak and in the course of the war. In contrast to this, however, the influence of the defendant Streicher decreasedfrom year to year. Even during the year 1939 he was almost entirely pushed aside, without any connection to Hitler or other leading men of the State and Party. Since 1940 he was relieved of his office and Gau-Leader and was politically a dead man ever since.

H0179 - 0036

If the defendant Streicher really had been the man whom the prosecution believes him to be, his influence and his activity would have increased automatically with the intensification of the fight against the Jews. The end would not have been, as it actually was, political impotence, and banishment, but the commission to carry out the destruction of Jewry.

By writing ad nauseam on the same subject for years in a clumsy, crude and violent manner, the defendant Streicher - as cannot be denied - has brought upon himself the hatred of the world. He has hereby created a strong feeling against him which resulted in rating his importance and his influence far beyond his real importance and which now entails the danger for him that his responsibility will be misjudged likewise.

The defendant, who, in this case has an ungrateful and difficult task, had to limit himself to presenting those aspects and facts which allow a clear recognition in its true extent of the importance of this man and of the role which he played in the tragedy of National Socialism.

But it cannot be the task of the defense to deny undeniable facts and to shield actions for which simply no excuse exists.

The fact remains, therefore, that this defendant took part in the destruction of the Main Synagogue of Nurnberg and thus allowed a place of religious worship to fall into decay.

The defendant states as an excuse that his aim hereby was not the demolition of a building destined for religious worship, but the removal of an edifice which did not fit into the style of old Nurnberg city, and had a disturbing effect and that this, his opinion, had been shared by art experts. That this is truth, was proved by the fact that he had left the second Jewish house of worship untouched until it finally, and without him having anything to do with it, went up in flames the night from the 9th to the 10th of November. However that

H0179 - 0037

may be, the defendant has shown here the same ruthlessnes as in his other a ctions. He himself has to account here for his actions, the defense cannot shield him. But here too it must be said that the population of Nurnberg disapproved of these actions clearly and unmistakable. It was clear to any impartial observer that the people viewed such actions with icy coldness and only by brute force could be made to put up with such measures and to witness such absurdities.

It is just as impossible for the defense to express any opinion regarding the reopening of the question of the ritual murder myth. These articles, to be sure, found no interest whatsoever, but their tendency is clear. The only point which, beside the good faith which we have to grant him, is extenuating for the defendant is the fact that it was not he who wrote these articles, but Holz: he cannot avoid, however, that the fact is held against him that he allowed it to happen.

It must be hard to understand that the defendant still took part in publication of the "Stuermer" after having long since been politically crippled and sent into exile. This very fact better than anything else reveals his one track mind.

When the prosecution accuses the defendant of having aimed at physical annihilation of the Jews and of having prepared the way for this later result with the things he published, then I would like to refer to the statements of the defendant given under oath when he was interrogated as a witness, to which I am here referring to their full extent.

The defendant claims that in the long series of Stuermer articles published since its beginning there was none which asked for real acts of violence against Jews. Furthermore, that among the more than thousand issues there could be found only about 15 which contained expressions, which could be held against him in the meaning of the indictment.

On the contrary, the defendant argued that his articles and speeches always had displayed an unmistakeable tendency to bring about a wholesale and universal solution of the Jewish problem, since a partial solution of any kind could not have any pur-

H0179 - 0038

pose and did not get at the heart of the problem. Even from this point of view, he had always expressed himself unequivocally against measures of violence of any kind, and he would never have approved of an action, as was finally carried out by Hitler in such a gruesome manner.

There must be serious doubts, whether this appears to prove to the defendant that he ever approved of the resultant mass murder of Jewry, and I leave this decision about this to the Tribunal. He personally however refers to the fact, that he did not recieve certain know ledge of those wholesale murders before 1944, a fact which was corroborated by the statements of the witnesses Adolf Streicher and Hiemer.

He considered the articles published in the Israelitsches Wochenblatt as a means of propaganda and consequently did not believe them. In his favor is the fact, that up to the Fall of 1943, he did no express in any article a satisfaction over the fate of Jewry in the East.

When he wrote at that time about the vanishing of the Jewish reservoir in the East, it cannot be surmised that he had available any source for an authentic confirmation. He might of course, have been of the opinion, that this vanishing process was not identical with physical annihilation but was rather to be considered in the light of evacuation of the collected Jewish population to foreign countries or into territory of the Soviet-Union. As no proof has been presented for that fact that the defendant had received hints from any quarters with regard to the intended extermination of Jewry, he could not have conceived such a satanic occurrence, as it appears to be absolutely inconceivable to the human mind. Certainly, it can not be assumed that the mental capacity of the defendant should have put him into a position to foresee such a solution of the Jew ish question, which could only have originated from the brain of a person no longer a master of his mind.

H0179 - 0039

The defendant describes himself as a fanatic and seeker of truth. He professes to have written nothing and to have expressed nothing in his speeches which he had not taken from some authentic source and corroborated accordingly.

There is no doubt that he was a fanatic. The fanatic, however, is a man who is so possessed or convinced of an idea or an illustion, that he will not be open to any other consideration, and it convinced of the correctness of his idea and nothing else. For the psychiatrist it is a sort of mental cramp.

Every kind of fanaticism is not far from the ideas of a maniac. Together with it there is to be found, as a rule, a remarkable overestimation and overevluation of ones own personality, and its influence on the world around it. Not one of the defendants, here in trial, shows such a discrepancy between fact and fancy as does the defendant Streicher.

The prosecution presented what he appeared to be to the outside world. What he actually was and is, has been shown by the trial.

But only actual facts can form the basis for the judgement. Consider in your judgement also, that the defendant in his position as Gau-leader of Franconia, showed also many human features, that he had a great number of political prisoners released from concentration camps, which even resulted in criminal proceedings against him. It should also be mentioned that he treated the prisoners of war, and foreign workers working on his estate, very well in every respect.

Whatever the judgement agaimst the defendant Streicher may be, it only will be concerned with the fate of one individual.

It seems to be established, however, that the German people and this defendant were never in agreement on this important question. The German people always disapproved the aims of this defendant as he expressed them in his publications and retained its own opinion of, and attitude towards, the Jews.

H0179 - 0040

The assumption of the prosecution that the biased articles in the "Stuermer" had found any echo or ready acceptance among the German population, or even an attitude ready to accept criminal measures, is herewith fully refuted.

The overwhelming majority in the German nation preserved their sound sense and showed themselves disinclined toward all acts of violence.

It may therefore assume that it will be declared free of all moral complicity and co-responsibility of those crimes before the public tribunal of the world, and will again take its place in the ranks of the nations.

The decision as to guilt or innocence of this defendant I shall, however, place in the hands of the High Tribunal.

H0179 - 0041

THE PRESIDENT: I call on Dr. Sauter for the Defendant Funk.

DR. SAUTER: For the defendant, Dr.Walther Funk. Gentlemen of the Tribunal, I have the task to examine the case of the defendant Dr. Walther Funk. That is to say, I am to deal with a topic which unfortunately is especially dry and prosaic. May I first make a short statement.

Principally, I shall not make any statements which are too general of either illegal, political, historical, or psychological matters, although such general statements, particularly within the framework of this proceedings, may appear. Such general statements have already been made by other defense counsel to a larger extent, and probably some more of them will still supplement them. Therefore, I shall limit myself to the point of view of the defense, to examine and to present to you the picture which the evidence in this trial shows, as given to the personality of the defendant Funk, of which I consider his motives the motives which may have led him.

Gentlemen of the Tribunal.

The entire course of this trial and the evidence offered in his own case have proven that the defendant Funk, at no time of the National Socialist regime and in none of the cases indicted here, played a decisive role.

Funk's authority of decision was always limited by superior power of authority. The remarks made by the defendant during his personal examination, that he was allowed to proceed as far as to the door, but was never permitted to enter, has been proven by the evidence to be quite correct.

In the party Funk was entrusted with several tasks only during the last year prior to the seizure of power, that is in 1932. These, however, were of no practical significance, as they were of very short duration. From the seizure of power on Funk was never appointed to an office in the party. He was never a member of any party organization, neither of the SS nor the SA, nor of the corps of political leaders. Funk held a Reichstag-Mandate only for the brief space of slightly more than six months prior to the seizure of power. Consequently he was not a member of the Reichstag at the time when the fundamental laws for the consolidation of National Socialist power were passed.

The laws of that time, especially the Enabling Act, with the responsibility for which Funk is also charged, were accepted by the Reichs-Cabinet at a time, when Funk was not yet a member of the Cabinet. He became a member, as is

H0179 - 0042

known, only at the close of 1937, by virtue of his appointment as Minister of Economy (Reichswirtschaftsminister) that is at a time when Cabinet sessions no longer took place. Funk, as press chief of the Reich-Cabinet, had neither a seat nor a vote in the cabinet and could not exert any influence whatsoever upon the contents of the bills. (I refer to the statement of Lammers). The same applies to racial laws, the so-called Nuernberg laws.

Funk had closer relations to the Fuehrer only during the period of 1½ years, in which he held regular press conferences at Hitler's in his capacity as Press chief of the Reich-Cabinet. That is from February 1933 through August 1934, up to the death of Reich President von Hindenburg. Later, Funk met Hitler only very rarely. The witness Dr. Lammers in this respect states the following: "Later he (Funk) in his capacity as Reich Minister of Economy came to see Hitler only extremely rarely. He was not consulted in many conferences, conferences at which he should have been consulted. He complained to me about this frequently. The Fuehrer often raised objections. There were various reasons against Funk. He viewed Funk sceptically and did not want him." (That is the testimony given by Dr. Lammers on 8 April 1946). Upon the question to the witness Dr. Lammers whether Funk had often expressed to him his grief about his unsatisfactory position as a Reich Minister for Economy and about his anxiety weighing heavily upon him due to the general conditions, Dr. Lammers replied: "I know that Funk had great worries and he was looking for an opportunity to discuss these with the Fuehrer. He had the fervent desire to be able to report to the Fuehrer in order to be at least partially informed about the war situation." That was in 1943 and 1944. And Lammers continues: "With the best will, it was not possible for Funk to be received by the Fuehrer and it was not possible for me to get him to the Fuehrer."

The striking fact that Funk, during all his ministerial activity, was called to the Fuehrer conferences but four or five times, gives the explanation that Hitler did not need him. Hitler, up to 1942, issued his instructions in economic affairs to Goering, who, in his capacity as Plenipotentiary for the Four-Year Plan, was responsible for the entire economy and, from the beginning of 1942, to Speer, who as Armament Minister, upon the grant of special authority could issue directives to all branches of production and who as of 1943 personally directed the entire production.

H0179 -0043

Therefore, Funk never played the main part but rather a subaltern role in the economy of the National Socialist Reich.

The co-defendant Goering specifically said of Funk, "Of course, according to the special authority that he was given he had to follow my directives in the field of economy and the Reichsbank. The responsibility for the directives and policy is entirely mine."

In the session of 20 June even the defendant Speer, as witness declared, that in his capacity as Armament Minister he claimed for himself from the very beginning any authority of decision in the most important economical spheres, such as coal, iron and steel, metal, aluminum and production of machinery. The entire management of energy and th total building program prior to Speer's commission at the beginning of 1942, was under the jurisdiction of Armament Minister Todt.

The evidence submitted by the prosecution in the case of defendant Funk, does not for the greater part bear on personal acts of Funk or instructions issued by him, but it bears rather on the various and manifold positions he occupied. On page 29 of the trial brief the prosecutor himself declares that the argument offered against Funk may be said to be inferential. The prosecution starts from the assumption that Funk, upon the basis of the many positions held by him, must have had knowledge of the various happenings, which are the subject of the accusation. The indictment refers, broadly spoken, to instructions and directives, issued by Funk personally only where the decrees of execution, issued by Funk for the carrying out of the Four Year Plan for the elimination of Jews from the economic life in November 1938, were concerned. This chapter will have to bd dealt with separately.

At political and military conferences, Funk was not consulted. His position was one of a ministerial expert with very narrow limitations on authorit of decisions.

H0179 - 0044

As Reich Minister for Economy Funk was subordinated to the Four Year Plan; that is, Goering, later the Armament Minister, had superior authoritie And finally, as was proven by the testimony of witnesses Goering, Lammers and Mayler, the Ministry for Economy assumed the status of a regular Trade-Ministry, which dealt essentially with the distribution of the consumer goods production and with technical problems in carrying out Foreign trade.

The Four-Year-Plan determined the use of gold and foreign currency in the Reichsbank. The decision about the amount of credits to be granted to the Reich with respect to the internal financing of the war was taken away from the Reichsbank at the time of Funk assuming office as Reichsbank president. Thereby Funk is exonerated of any responsibility in the financing of the war. The responsible agency herefore was always the Reich-Finance-Minister. That is, not Funk. Finally, as General Plenipotentiary for Economy Funk's task in August 1939 solely existed in co-ordinating civil agencies of economy for such measures as would guarantee a smooth reconversion from peace to wartime economy. The result of these consultations were the proposals which Funk presented to Hitler on 25 August 1939 in the letter which has been quoted several times under 699 PS. At his examination Funk stated that this letter did not portray matters correctly, since it was a purely private letter, a letter of appreciation for Hitler's birthday congratulations which he had received. This point will have to be taken up again later, since the prosecution especially emphasized the position of Funk as General Plenipotentiary for Economy.

Evidence shows that this was the most disputed but also the weakest position of Funk. With regard to the occupied territories Funk had no decisive authority whatsoever. This was demonstrated by all witnesses interrogated regarding this question. But all witnesses equally confirmed that Funk always turned against the pillage of the occupied territories. He fought against the purchases in the black markets, he was against abolishing the foreign exchange regulations in connection with Holland by which measure the German purchases in Holland were to be facilitated, he organized, as we have heard by the witness Neubacher, exports to Greece from Germany and from the Eastern European states and even sent gold there.

H0179 - 0045

He repeatedly rose against overburdening the occupied territories financially, especially in 1942 and 1944 against raising the occupation costs in France. He defended the currency of the occupied countries against repeating attempts of devaluation. In the case of Denmark he achieved, even in spite of all opposition, a revalorization of the currency. Furthermore Funk fought an arbitrary stabilization of exchange on the occasion of currency regulations in occupied countries. Germany's clearing debt was always recognized by Funk as a true commercial debt also with regard to the occupied countries. This is shown especially by his proposal mentioned here to commercialize this clearing debt by a loan by Germany issued for subscription in all European countries. Funk was opposed to too strong and compulsory measures an employment of foreign labor in Germany.

This was also testified by the defendant Sauckel at his interrogation here. All these facts, favourably affecting the occupied countries werd confirmed by the witnesses Hayler, Landfried, Puhl, Neubacher, and co-defendant Seyss-Inquart.

According to these statements Funk always strove to keep order in the economic and social life of the occupied territories and protect them from shocks and disturbances. He always was opposed and disinclined to radical and arbitrary measures. He rather was in favour of agreements and compromises. Even during the war Funk always thought of peace. This was stated by the witnesses Landfried and Hayler and they added that Funk was repeatedly reproached for his attitude by the leading states and party offices. Also the defendant Speer testified at his interrogation that Funk, during the war, had occupied too many workers in the consumer goods economy and that this was a reason that Funk had to give up the management of the consumer goods production in 1943.

That Funk, the same as Speer, had revolted against the horrible "scorched earth" policy has been proved to the Court by Speer himself, also by the witness Hayler on 7 May 1946. This witness declared that he never saw Funk so upset as in that moment when he was informed of this order for destruction. Funk gave directions, as Hayler had testified, as Reichswirtschaftsminister (minister for Reich economy) as well as Reichsbankpresident (President of the Reichs bank), to protect the warehouses from

H0179 - 0046

the ordered destruction and assure the supply of commodities necessary for the life of the population, also the currency transactions in the territories which were abandoned.

Funk's economic political goal,

H0179 – 0047

one may, indeed, say, the contents of his lifework was a European economic community on the basis of just and natural balance of interests of the soveriegn countries. Relentlessly even during the war, he strove to reach this goal, although the elementary war necessities and the developments brought on by the war naturally hindered these efforts everywhere. The economic Europe, as Funk saw and endeavoured to see it, was impressively represented by him in some major economic-political speeches. Extracts from sane of these speeches, often also recognized in neutral and enemy countries, are contained in Document Book Funk No.9, 10 and 11.

When reviewing the acts of the defendat, his whole personality naturally plays a role if the motives from which this defendant acted are to be ascertained. The German people looked upon Funk, that is as far as he was known, never as a Party man who would be capable of participating in brutal outrages, violence and terror, or to amass fortunes at the cost of others. He rather shared his preference for art and literature with his friend Baldur von Schirach. Originally, as we have been told, he wanted to become a musician and in later times he much rather saw in his house poets and artistss, than the men from the Party and the State. In professional circles he was known and considered as an economist, as a man with an extensive theoretical and historical knowledge who rose from journalism and was a brilliant stylist. He had an economically secure psition as chief editor with the distinguished Berliner Boersen Zeitung so that he deprived himself financially when he accepted the office of press chief in the Reich Cabinet at the beginning of 1933 after Hitler's assumption of power. Therefore he was not one of those desperados who was glad to get into a well paid position through Hitler. On the contrary, he made a financial sacrifice when he took over the state office offered to him, and therefore it seems entirely credible that he did this ot of patriotism, out of a sense of duty toward his people, to put himself at the service of the country during

H0179 - 0048

hard times of distress. To judge the personality and character of defendant Funk, it is further of some importance that he never held or strove toward any rank in the Party. Other people who took over high state offices in the Third Reich, for example, bestowed with the title of a SS-Gruppenfuehrer, or given the rank of a SA-Obergruppenfuehrer. Funk, on the contrary, from 1931 until the end of the Third Reich, was only a plain Party member; although he took pains for a scrupulous management of his state offices, he endeavoured to obtain no honors in the Party whosoever. The only thing the defendant Funk was reproached for in this connection was the fact that he accepted an endowment in 1940 on his 50th birthday. That in itself of course, was no punishable act, but was evidently valued by the Tribunal as a moral charge against the defendant. Therefore, we shall define our position with regard to this briefly. We remember how this endowment came about: The president and board of the Reich Chamber of Economy (Reichswirtschaftkammer), that is the highest representatives of German economic life, presented him on his 50th birthday with a farm of 55 hectars in Upper Bavaria. This estate, of course, existed for the time being only on the paper of the presentation document and had to be erected first. This presentation was expressively approved by the head of state, Adolf Hitler, therefore was not made secretely to the Reich Minister of Economy but in all official form without anything being suppressed or concealed. The gift consequently, turned out to be, for Funk, a fatal one, because the construction of the building was much more expensive than was expected, and because Funk had to pay a very high gift tax. Funk, who, until then, never had any debts and always lived in regulated conditions, came now, because of this "donation" of an estate, into debt. Goering, who heard about this, helped Funk out with a generous sum. When Hitler heard, through Minister Lammers, of Funk's financial difficulties, he had transferred to him, as endowment, the cash necessary for the arrangement of his economic affairs. With

H0179 - 0049

that Funk was able to pay his taxes and his debts. The rest was used by Funk to donate two public establishments one for the dependants of the officials of the Reichsbank killed in action, the other for the personnel of the Ministry pf Economy for the same purpose. The estate, too, was to be a donation some day. Thus Funk demonstrated that he had tact also on this point. Even though such an endowment cannot be legally disputed, he felt that it was more correct to distance oneself from such endowments and to give them rather to public uses, as the gift could not possibly be turned down flatly considering it came from the head of the state. Henceforth, I wish to turn toward the criminal responsibility of the defendant Funk on the individual points of accusation.

H0179 - 0050

AFTERNOON SESSION

(The hearing reconvened at 1410 hours, 12 July 1946.)

THE PRESIDENT: The Tribunal proposes to go until 4:00 o'clock without a break, if that is convenient.

DR. SAUTER: Gentlemen of the Tribunal, until now, in general statements, I have defined the position of defendant Funk and I shall now come to the criminal responsibility of the defendant Funk on the individual points of accusation.

The first point of the indictment deals with the support of the seizure of power by the Party, that is, the party activity of defendant Funk during the years of 1931 and until the end of 1932.

The defendant Funk is supposed to have promoted the seizure of power by the conspirators. This point of the indictment deals with the activity of the defendant Funk from the time when he joined the party in June 1931 until the seizure of power on 30 January 1933. The indictment maintains that Funk, through interceding for the Party during that time, had expedited the seizure of power by the National Socialists. This is correct. The defendant Funk himself during his interrogation on 4 May, declared and explained in detail that he considered the seizure of the ruling power by the National Socialists the only possibility for the deliverance of the German people from the grave, intellectual, economical, and social distress of that time. The economic program of the Party was, in his opinion, vague and mainly designated for propaganda. He himself wanted to bring to bear his own economic principles in order to work through the Party for the benefit of the German people. Funk described this view point to the court in detail during his examination. It is based on the idea of private property which is inseparable from the perception of the differentiation of human efficiency. Funk demanded the acknowledgment of private initiative and of the responsibility of the creative entrepreneur, free competition and a balancing of social contrasts. He aimed at the elimination of party and class warfare at a strong government with full authority and responsibility and at a uniform political will of the people. Through his conversations with Adolf Hitler and with other party leaders he

H0179 - 0051

became convinced that the party positively recognized these principles and ideas of his. In Funk's opinion he cannot be blamed for his support of the Party in its struggle for power. Funk believes that, especially the discussions in this trial furnished absolute proof that the Party came to power absolutely legally. But even the ways and means by which Funk assisted the Party, can not, in his conviction, be condemned. The role thereby, however, which the prosecution attributes to him does not correspond with the facts. Funk's activity is in part, considerably overestimated in its importance, partly also is there an incorrect opinion about it.

The evidence of the prosecution consists mainly of references and extract of reference books and especially of a book by Dr. Paul Oestreich: "Walter Funk, a life dedicated to economics" which was presented in evidence to the Tribunal. The core of this evidence is an "Economic Reconstruction Program" of the defendant Funk, printed on page 81 of this book which the prosecution calls, and I quote: "the official party declaration concerning the economic field" and "the economic bible for the party organization". This so-called "Economic Reconstruction Program" forms the basis for the wrong accusation of Funk, on page 3 of the trial brief, that the defendant Funk assisted "in the formulating of the program which was publicly proclaimed by the Nazi Party and by Hitler". This "Economic Reconstruction Program" which during the testimony of the defendant Funk was read word for word

H0179-0052

did, indeed contain nothing extraordinary or even revolutionary nor really anything which was in any way characteristic for the national socialist ideology. The program points to the necessity of providing work, of creating productive credits without inflationary consequences, to the necessity of balancing the public finances, further to the need for protective measures for the agriculture as well as for the urban real estate and for a rearrangement of the economic relations with foreign countries. It is a program of which Funk in his testimony quite correctly said that any liberal or democratic party an government could advocate. The defendant Funk only regrets that the party di not fully subscribe to these principles. Due to his economic view point Funk later on had constant difficulties and differences with differant party offic especially with the German Labor Front, the Party Chancery, with Himmler and with most of the district leaders.

This was also confirmed by the witness Dr. Landfried who in his interrogatory submitted as Funk Exhibit No. 16, described these differences of Funk with the Party in detail. Funk had a reputation in the Party predominantly as a liberal and as an outsider. During that time, that is essentially in 1932, he established relations between Hitler and some leading personalities of the German economy. He also worked for an understanding of the national socialist ideas and for the support of the Party by the economy. By virtue of this activity he was described as Hitler's economic adviser. But this was not a party office not a party title.

In Document EC-440, USA Exhibit 874, submitted by the American prosecut in the cross-examination of the defendant Funk, Funk states that the later Under Secretary Keppler was considered the economic adviser of the Fuehrer for many years before him, Funk - Funk wanted to show by this reference that the designation "Economic adviser of the Fuehrer" was given by the public to other persons also.

It was only for a very short period that Funk was commissioned with Party tasks during that time. This activit never gained any considerable in tance which follows from the fact that with the assumption of power the party activity of Funk ceased completely. In the other sectors, such as Food and Agriculture, Finances, etc, the Party incumbents who entered the Civil Servic as a Minister, Under Secretary, etc. retained their party offices which

H0179 - 0053

generally even gained in importance. The elimination of the defendant Funk from every party office at the moment of the assumption of power shows clearly that the Party leaders did not especially care for the party activity of Funk.

In the cross examination of the defendant Funk the Soviet Russian prosecution showed him an article which had appeared in the magazine "Das Reich" on k8 August 1940, on the occasion of Funk's 50th birthday. In this birthday article the author, an economist by the name of Dr. Herle, emphasizes that Funk "as intermediary between Party and Economy had become a peace maker for a new spiritual attitude of the German entrepreneur".

In this respect it can be said : Funk never denied that he regarded it his task to find a synthesis for an economy which on the one hand has an obligation toward state and community, but on the other hand is based on private ownership and private initiative and responsibility. Funk always recognized the political aims and ideals of national socialism.

The German people in its majority had embraced these goals and ideologies as was proven by several plebiscites. And Funk could not suspect that all these good intentions and ideal aims so often emphasized by Hitler, with which National Socialism began its reign, would later sink in the blood and smoke of war and in an inconceivable inadequacy and inhumanity. Funk testified on the stand expressly that he considered the authoritative form of government, the strong state, a responsible cabinet, the social community and a socially minded economy a prerequisite for a removal of the then grave intellectual and economic crisis of the German people. He always clearly emphasized the primacy of politics before the primacy of the economy.

As press chief of the Reich Government, on 30 January 1933, Funk took up the state office of a Ministerialdirector in the Reich Chancery. The direction of the press policies however, passed after one and a half month into the hands of Dr. Goebbels when the latter became Reichsminister for Public Enlightment and Propaganda, and the press department of the Reich Govement, which Funk should have had directed up to then was merged into the newly established Ministry for Propaganda. Only for the time being he retained the personal news report to the Reich President v. Hindenburg and to the Reich Chancellor Adolf Hitler until the death of Hindenbur.

H0179 - 0054

Then this activity stopped altogether also. The office of the Press Chief of the Reich Government existed practically only on paper. This was expressly confirmed also by the defendant Fritzsche upon his examination as a witness, on 28 June.

Gentlemen, I now come to a second point of the indictment, that is, consolidation of control of government and party, and, connected therewith, persecution of the Jews of liberal professions, Reich Ministry of Propaganda. The statements referring to this point are contained in the brief which is before you, on pages 17 to 24.

Gentlemen of the Tribunal I shall skip the details of my brief referring to this particular point, and I beg you to take judicial notice of them. I shall merely quote a few sentences in extract in this connection.

The guilt of the defendant is concluded particularly from his position as a Secretary of State in the Ministry of Propaganda. The hearing of evidence has shown, however, that in this post as Secretary of State Funk had nothing whatsoever to do with the actual propaganda activities. He didn't make any radio speeches or speeches in public meetings. Press policy, on the other hand even during that period was exclusively decided by Dr. Goebbels personally.

However, during that period, Funk particularly took care of the wishes and complaints of the journalists. He protected the press against misuse by official departments, and he made every effort to secure for the press an individual look and to enable them to work in a responsible manner.

All this has been established by a number of witnesses to whom I refer in the pages I have mentioned, pages 17 to 24, in particular, however, by the witnesses Amann, Kallus, Fritsche, Oeser, and Roosen. The two latter witnesses have particularly confirmed that Funk as State Secretary in the Ministry of Propaganda energetically took care of Jews and such persons who had been affected by National Socialist legislation and cultural policy in their creative efforts. Funk so interested himself with such people that he actually jeopardized his own official position and endangered his position to such an extent that eventually he became a suspect.

Then, gentlemen of the Tribunal, I turn to another chapter, and that is accusation which appears under Roman numeral IV of my brief, on page 24, namely that he had partaken in the preparation of wars of aggression, a point which contained under Figure 4 of the Indictment.

H0179 - 0055

The accusation against the defendant Funk is -- and I quote -- "that he with full knowledge of the aggressive plans of the conspirators participated daily in the plans and preparations for such wars."

First of all, the Indictment, as evidence for this point, says that Goering's Ministry of Economy was -- and I quote -- "made the high command of the German war economy and it became part of the Four Year Plan and then was put under Funk's command."

Further on the Indictment states that by the Law for the Defense of the Reich of 4 September 1938 Funk in his capacity as High Commissioner of Economy was explicitly entrusted with the mobilization of the German economy in time of war.

The statement of the Indictment that the Reich Ministry of economy was made a part of the Four Year Plan before its transfer by Goering to Funk is quite correct, but the so-called high command of the German economy was not exercised by the Reich Minister of Economy Funk but by the Commissioner for the Four Year Plan exclusively; that is to say, by the co-defendant Goering, whose instructions Funk had to follow.

Moreover, the most important branches of production were managed by special general commissioners of the Four Year Plan, who were controlled directly by Goering and received their instructions from Goering -- not from Funk. The Reich Ministry of Economy was merely the office which executed the directives of the Four Year Plan.

The defendant Funk, as a witness, has pointed out that some offices such as the Reich Office for Economic Development and the Reich Office for Soil Investigation were formally under the supervision of the Reich Minister of Economy, but didi, in fact, function as autonomous institutions of the Four Year Plan.

Funk's position as Plenipotentiary for Economy was vigorously attacked from the beginning. During the cross-examination of the defendant Funk by the American Prosecution a document -- EC 255 -- was submitted. This is a letter of the Reich War Minister von Blomberg to the Commissioner for the Four Year Plan, Goering, dated 29 November 1937, wherein Blomberg proposes that the defendant Funk, who had just -- on November 27 1937 -- been appointed Reich Minister of Economy, should also be appointed General

H0179 - 0056

Commissioner for War Economy. However, this was not done.

At first Goering himself took over the Reich Ministry of Economy and handed it over only in February 1938, after three months, to the defendant Funk. Then the High Command of the Armed Forces -- more especially the Army Economic Staff under General Thomass -- requested that the Plenipotentiary for War Economy should be bound for the future to follow the directives of the High Command for all questions connected with the supplying of the armed forces. In this document, which is EC 270, USA Exhibit 840, the High Command of the Armed Forces, the Economic Staff, claims a right to direct the General Commissioner for War Economy on nearly everyone of his fields of activity.

The defendant Funk tried, by a conversation with Reich Marshal Goering and a letter to Reich Minister Dr. Lammers to clarify his position as General Commissioner for War Economy and asked to be placed, as Plenipotentiary for War Economy, under direct command of Hitler and not to be compelled to obey the directives of the command of the armed forces. Goering and Lammers agreed with Funk's opinion, but this has nothing to do -- and this must be emphasized most strongly -- with Funk's being put under command of Goering, as all other supreme Reich offices and ministers which were put under Hitler's direct command were required to follow the directives of the Commissioner for the Four Year Plan; that is to say, Goering.

It is, however, remarkable that, according to the act for the Reich defense of September 4, 1938, the defendant Funk -- this is the Second Reich Defense Law -- did not become Plenipotentiary General for War Economy but Plenipotentiary for Economy, without the word "war", and that this act explicitly stated that Funk had to obey the requests of the OKW. Accordingly, the OKW had at last carried through its wish.

Moreover, the individual economic departments which according to the Reich Defense Law were under the direction of the Plenipotentiary General for the Economy for his special tasks were not willing to recognize him. During the cross-examination of the defendant Funk an interrogation of the former Under Secretary Dr. Hans Posse, Funk's deputy as Plenipotentiary General for Economics, was produced. In it the latter declared that the

H0179-0057

Plenipotentiary General for the Economy "in reality never entered into function". The ministers and Under Secretaries of the individual economic departments did not, according to the statement of Posse, wish to be placed under Funk's control and, in fact, protested against it.

Posse then speaks of the difference Funk had with the Four Year Plan. He calls these conflicts "the struggle for power". In this respect nothing else is meant but the authority to make decisions with regard to the other economic departments. This was not a difference between Goering and Funk; that is wrong because it was absolutely evident that Funk even as a Plenipotentiary General for the Economy was subordinate to Goering. Actually, this was a quarrel of the under secretaries. The individual economic departments declared that they reported to the Plenipotentiary for the Four Year Plan and refused to recognize the right of the Plenipotentiary General for the Economy -- Funk -- to give them directives because Funk himself was under the direction of the Four Year Plan. The under secretaries of the Four Year Plan supported the departments in this interpretation.

This lack of clearness and overlapping of competencies were the reasons why the authority to issue directives passed a few months after the outbreak of the war from the Plenipotentiary General for the Economy formally into the hands of the Plenipotentiary of the Four Year Plan.

Then, I can leave out two pages, and I shall continue with the second paragraph of page 29.

But nowhere in the material presented by the Prosecution can be found a single indication for the fact that defendant Funk knew anything about conversations in which a planned war -- in particular, a war of aggression -- on the part of Germany was discussed. Funk was never invited to any conversations of this kind. He was, in particular, not present at the conversation with Goering on 14 October 1938 which was treated exhaustively by the Prosecution on Page 24 of the Trial Brief.

According to the Prosecution, Goering referred during that meeting to an order of Hitler for an unusual increase in armaments, and especially weapons of attack. The Prosecutor declared during the session of 11 January 1946 that Goering at that meeting addressed words to Funk which, as was said,

H0179 - 0058

"were the words of a man already at war."

However, by several documents which are contained in Document Book Funk and which have been submitted to the Tribunal, it is unequivocally proved that defendant Funk was not present at that meeting at all because at that time he was in Sofia in order to conduct economic negotiations with Bulgaria. This exhibit of the Prosecution, which clearly was meant to be a main exhibit, is thereby invalidated.

When Funk wrote his letter of 25 August 1939 to Hitler, which I mentioned this morning, the German and Polish armies were already facing one another and were completely mobilized. Therefore, he was compelled to act in that particular manner, and he could at that moment no longer retract any preparations. Compare therewith the interrogatory from Kallus in Document Book Funk Number 18, who confirms that absolutely.

Defendant Funk declared here on the witness stand in that connection, "It was naturally my duty as Plenipotentiary General for the Economy to do all I could to prevent shocks in the civilian sector of the economy in the event of war, and it was further my duty as President of the Reichsbank to reinforce as much as possible the supply of gold and foreign currency in the Reichsbank."

He goes on to say, "That was necessary on account of the general political tension at the time, and it would also have been necessary if war had been avoided and only economic sanctions had been imposed, which in view of the political situation at the time had to be expected and could be expected. It was also my duty as Reich Minister of Economy to increase production."

That is a quotation from the words of the defendant Funk.

On this subject the witness Puhl, the vice president of the Reichsbank, states in his answers to the interrogatory of 1 May, which is in the hands of the Tribunal, that the position of the Reichsbank in the last seven months of Funk's presidency before the outbreak of the war had not been materially reinforced and that the exchange of foreign assets for gold since January 1939 had been carried out on only a very modest scale. The gold and foreign currency policy of the Reichsbank, this witness said, corresponded to the customary banking practice of long standing.

H0179 - 0059

These statements of Puhl are important for the correct appreciation of Funk's references to the conversion of foreign assets into gold, in his letter to Hitler of 25 August 1939. The transactions, in any case, at the time when Funk was President of the Reichsbank, were hardly longer of any importance. Funk's excessive way of expressing himself to Hitler makes the contents appear much more important than they actually were.

Funk explained this fact during his examination by saying that this letter was a private letter of thanks and that in those days every German was under the highest tension because of the political occurrences that were getting all of Europe very much excited, and that at this time of danger of war for his country, he -- Funk -- wanted to let his Chancellor know that he, too -- that is the defendant Funk -- had done his duty.

This was the first -- and it remained the only -- time that Funk as Plenipotentiary for Economy became active and busy.

Here I must insert something which is based upon a protocol which the defendant submitted only after the end of the hearing of evidence. It is document 3787 PS. That is the minutes of the second meeting of the Reich Defense Council on 23 June 1939.

H0179 - 0060

During that meeting of the Reich Defense Council, which occurred about two months before the begin ning of the War, Funk, as General Plenipotentiary for Economy, participated. However, judging from the way it was proposed, the minutes leave no doubt whatever that we are here concerned with general, and therefore more theoretical, preparations for the event of some war or other.

Furthermore, to appreciate this document, it must not be overlooked that during the war which broke out three months later, the tasks of the defendant Funk in the sector of distributing labor were transferred entirely to the Four Year Plan, since the General Plenipotentiary for Economy, in his chief functions was, soon after the beginning of the war, completely and formally abolished, as I have previously shown.

I now continue with my brief, if I may.

The defendant Funk has explicitly stated, during his examination, that he, right to the end, did not believe war would come, and why he did not believe it, but on the contrary, that he thought the Polish conflict would be settled by diplomatic means. The correctness of this statement is also confirmed by the witnesses Landfried, Posse and Puhl in answering the interrogatories, presented to the Court as an exhibit by the defense or by the prosecution.

The danger of war with Russia came to Funk's knowledge for the first time when he heard of Rosenberg's appointment as delegate for the unified treatment of Eastern-European problems in April of 1941.

As we remember well, at that time the defendant Funk was given the same explanations by Lammers and Rosenberg as were expressed in general before the Tribunal here by witnesses heard on this question. He was told that the reason for the preparations for war against Soviet Russia was that the Soviet Russians were massing strong troops along the entire border, that they had invaded Bessarabia, and that Molotov, in his discussions regardint the territory of the Baltic Sea and the Balkans, had made demands which Germany could not fulfil.

Since Rosenberg stated that the commission given by Hitler also included economic measures, Funk placed Ministerialdirector Dr. Schlotterer at Rosenberg's disposal as a liaison man. Later, Schlotterer took over the

H0179 - 0061

direction of the economic section of the Ministry Rosenberg, and he also joined the Economic Operations Staff East of the Four Year Plan. The Ministry for Economy itself had practically nothing to do with the economic questions of the occupied East, and concerned itself merely with questions which had a bearing on internal German economy.

The Ministry for Economy had no authority whatever for decisions in the occupied Eastern Territories.

During the cross-examination, the defendant Funk, on the subject "Preparations of war against Russia", was shown an extract from an interrogation of 19 October, 1945, USA Exhibit 875. In this interrogation Funk stated that the defendant Hess had asked him, at the end of April 1941, if he, Funk, had heard anything about an impending war against Russia. Funk replied, and I quote: "I have not heard anything definite, but it seems as if there is some talk along that line."

The explanation for this conversation at the end of April 1941 between two who were not initiated, is most likely because on that date Funk did not yet exactly know the reason for Rosenberg's commission, and was going only on presumptions and rumors.

On 28 May 1941, Rosenberg had a meeting with Funk (document 1031-PS). In this meeting the question was discussed, as we can well remember, how the money problem in the East was to be regulated if a war against Russia should break out, and if those territories should be occupied by our forces.

Gentlemen, that, in my opinion, is amost natural procedure, that in view of an imminent war, even a defensive war, the authorities responsible for money matters should discuss the question of how, in the case of occupation of enemy territory, money matters should be handled there.

Funk was against any regulation which might cause speculations, and he called the suggested rate of exchange for marks and rubles an arbitrary act. He joined Rosenberg in his conception that the Russian territory should have its own national currency as soon as conditions would permit. For the rest, he demanded further investigation of these problems, especially since the matter could not be determined in advance.

Therefore, here too Funk approached matters with his characteristic precaution and endeavored to find a solution which would bring about stable

H0179-0062

conditions.

If it was mentioned in the discussion with Rosenberg -- thought not on the part of Funk -- that ruble bills had to be printed in order to meet the most urgent demands for currency, then Funk saw neither anything unusual nor criminal therein. If a country has been depleted of its currency, then a new currency simply must be created by that power which is responsible for the maintenance of a stable monetary system. Who produced the banknotes was entirely unimportant to Funk; important for him was by whomthe banknotes were issued and in what quantity.

Moreover, the production of a new banknote requires months of preparations, so that the execution of such a plan --which, as I said, was not Funk's plan -- could have been intended only for a much later date.

Actually, war broke out a few weeks after this discussion. The defendant Funk knew that war with Russia was imminent. That Germany had been preparing for such a war for a long time was as little known to him as the fact that Germany would attack, and thus wage a preventive war.

Funk was informed neither on the march into Austria nor about the negotiations on Sudetenland -- in September and October 1939 he was not in Germany at all -- nor on the seizure of the remainder of Czechoslovakia. About Poland, he knew that the conflict was acute, and nothing else; likewise about Russia. But in both cases he was informed only a short time before the actual outbreak of war. Regarding wars with other countries, Funk received no information whatsoever before the opening of hostilities, but only afterwards.

From all the above-mentioned facts it can be clearly seen that Funk knew nothing of Hitler's intentions in the line of foreign policy, and had no knowledge whatsoever of the fact that Hitler was making any kind of plans for aggressive war. Truly, Funk concerned himself, in the summer of 1939, especially with the conversion of German economy from a peace- to a war-time basis. But to prepare the German people for a defensive war and to take economic measures necessary for a defensive war, Funk considered not only as his right but as his duty as an official of the Reich.

Now, the prosecution believes that it can get around all these deliberations by calling the Reichsregierung or the National Socialist Party

H0179 - 0063

a criminal organization which conspired against other nations, and whose sole task had been to plan and wage wars of aggression, to subjugate and enslave foreign nations, to plunder, and to Germanize other countries.

This deduction is erroneous, because only Hitler himself and a few of those men closest to him, of the type of a Goebbels, Himmler and Bormann, devised and executed these criminal plans. According to the evidence heard, it cannot be doubted that even the highest officials of the State and of the Armed Forces --and in particular Funk -- were not initiated into these plans, but rather, that these plans were concealed from them by a cunning system of secrecy. A comparison with secret societies, which in other countries banded together in criminal organizations -- as, for example, the Ku-Klux-Klan in America, which was mentioned by the prosecution -- cannot be made, also for another reason.

The Ku-Klux-Klan, for instance, was, from the start, organized as a secret society with the purpose of terrorizing and committing crimes. In 1871, after scarcely six years of existence, it was --by a special law, the Ku-Klux-Klan -- expressly forbidden by the North American Government. At that time the Government even declared martial lawagainst it and fought it with every possible means. It was an organization with which the Government and Parliament of the United States never had any dealings at all. A man like Funk would, of course, never have joined a secret society, a criminal organization against which the Government was fighting. However, the National Socialist Party in Germany never was a secret organization, but was a party

recognized by the government and considered lawful; in a special Reich law expression was given to the unity between this party and the state. The leader of this party was at the same time from 1934 the elected head of the Reich and this head of the state and his government have from 1933 on constantly been officially recognized as a government by the entire world. It was just because of this international recognition of Hitler by all the foreign countries, a recognition which was still maintained even during the second world-war, that Funk and millions of other Germans never doubted the lawfulness of the government and that such doubts, if they ever tried to enter his mind, were nipped in the bud, and millions of German officials and German soldiers assumed exactly like Funk that they were only doing their duty in not denying this head of the state the recognition which all the countries of the world gave him.

Here I shall leave out a passage in the copy before you, and I shall continue on Page 37.

Funk has never denied, as has already been mentioned, that in his plans and regulations he naturally also thought of the possibility of wars which Germany perhaps some day might have to wage, exactly as every general staff as a matter of duty has to give consideration to such possibilities. At that time there existed for Funk every reason thereto; for the world situation since the first world-war was so tense and the conflicting interests of the individual nations appeared often insurmountable to such an extent that every statesman had to make the necessary preparations for war if he did not want to be accused of negligence or of betrayal of the interests of his own people. Therefore such preparatory activity in itself had no criminal significance, and Funk does not doubt at all that the ministers of economics and the bank-presidents of other countries also during those years made preparations similar to his for the event of war, and had to make them. For the question, of legal punishment in Funk's case it is not essential whether or not he, for his part, ordered such preparations, but exclusively whether or not he know that Hitler was planning aggressive wars and that he intended to wage such aggressive wars in violation of existing treaties and under disregard of international law.

H0179 - 0064

But Funk, as he declared under oath, did not know this and did not go on such assumptions either. Due to Hitler's constant affirmations of peace such possibilities never entered his mind. Today of course we know, on the basis of the actual events of the time that followed and on the basis of the facts established by this proceedings that those peace-assertions of Hitler's, which were on his lips yet when he committed suicide, were in reality only lies and deception. But, at that time, Funk took these peace-affirmations of Hitler's to be the absolute truth. It never entered Funk's mind at that time that he and the whole German nation could be deceived by Hitler; but rather did Funk trust Hitler's words exactly as did the whole world, and thus become a victim of that deception as did the whole world. If foreign statesmen and generals are not reproached for having believed Hitler's peace-affirmations, although they surely must have been much better informed about Germany's re-armament than Funk, then one cannot now because of the faith he had in the head of the state, accuse him of a crime.

Gentlemen of the Tribunal, I have now underlined the accusation of the prosecution that Funk had planned aggressive wars, and I come to a further chapter of the indictment concerning Funk's activities in the occupied territories, and the chapter of forced labor.

The evidence which the prosecution brought against Funk on the subject of "Forced Labor" or "Slave-Labor-Program" (as the prosecution calls it) is only scanty. In the main he is held responsible for the forcible employment of foreign man-power on the grounds that, since autumn 1943, he was a member of the "Central Planning." He attended a session of Central Planning Board for the first time on 22 November 1943 and later only very rarely, as was stated by the defendant Speer as witness and as is shown by the minutes of this board which were very carefully kept. With questions of direction of labor -- and I should like to underline this specifically -- Funk never concerned himself at all. He was in principle opposed to drawing too many laborers, especially by force, out of the occupied territories because this disturbed the economic life and the social order of these territories. Sauckel, Landfried and Hayler have affirmed this, and the same is disclosed by Funk's personal remark-

H0179 - 0065

H0179 - 0066

in the here frequently mentioned conference with Lammers on 11 July 1944 (Document 3819-PS), where, for example, Funk expressed himself against "Ruthless police raids."

When Funk sent representatives to Central Planning, he did it only for the purpose that they should see to it that the necessary raw-materials were assigned to the industries of the consumer's goods and for export, but never on account of the questions of foreign labor in which he was not at all interested. If the prosecution confronted the witness Hayler during a cross-examination on 7 May 1946 (Page 9070 of the German transcript) with a statement by Funk from the preliminary interrogation of 22 October 1945 (3544-PS), wherein Funk declared that he had "not racked his brain" over these labor-problems, then it must also be stated that in the next sentence of this protocol, so to speak under the same breath, Funk declared that he had always done his utmost to prevent the hauling away of laborers from their homeland, e.g. France. This second sentence, although it was not quoted, seems to be of special importance because it also reveals Funk's declining attitude against the forcible measures used in connection with direction of labor, particularly foreign labor. Now it has been deposed by the defendant Speer in the session of the Tribunal on 20 June that Central Planning made no plans at all for direction of labor. Only occasionally discussions on direction of labor questions took place here. Not the stenographic notes introduced here, but rather the protocols, contain the actual results of the negotiations and the decisions of the Central Planning. But these protocols have not been introduced by the prosecution. As has been proven, Funk, who attended the sessions of Central Planning only a few times never received the stenographic notes, but only the protocols for his information and from there, nothing could be seen about that. Previous to the time when Speer made the decisions, regarding war-production, and before Sauckel became Plenipotentiary General for Direction of Labor, i.e. before 1942, were questions of procurement of man-power for production discussed in the Four-Years-Plan. Later too, demands for the labor required were, in the main, as Speer has testified, presented in direct negotiations between the industries and the offices for direction of

H0179 - 0067

labor. While the production of the Reich-Ministry for Economy, according to the instructions of the Four-Year-Plan, still was under the care of Funk, these direction of labor questions were not dealt with by the Reich-Ministry for Economy but rather by the Plenipotentiaries-General of the Four-Year-Plan, appointed for the various branches of industry negotiated directly with the Plenipotentiary-General for Direction of Labor or with his competent offices. Speer rectified this in regard to the document Sauckel Exhibit No. 12 and likewise the fact, that several branches of industry such as the construction department, which do not belong there, were in this document cited as coming under the competency of the Reich-Minister of Economy.

I continue on Page 41.

Finally it must be concluded that Funk, at the time he joined the Central Planning, no longer had any tasks to fulfill in the production, and consequently could no longer demand workers for such.

I summarize by skipping a few more passages and come to Page 42, about the middle of the page, to say that the evidence submitted has proven beyond doubt that the defendant Funk always opposed the exploitation of occupied territories by various measures, and that by the very fact that he succeeded in preventing the devaluation of currency in occupied countries, they were protected from harm the extent of which cannot be evaluated individually.

With that, Gentlement of the Tribunal, I leave this chapter of the indictment against Funk, and I turn to another chapter of the indictment against Funk; that is, his participation in the elimination of Jews from economic life, which is treated as Point 3 in the indictment against Funk.

In view of the time at my disposal I cannot afford to go into further details with respect to accusations raised against Funk by the Indictment but I shall refer to statements given by Funk with respect hereto; I must first, however, deal more fully with a problem, which to me seems the most important in the whole of the accusation against Funk, namely the reproach, that he participated in any manner in the persecution of the Jew . This question appears to me to be the most decisive for judging of defendant Funk before this Tribunal.

Gentlemen, of course it was never asserted in Germany that Funk belonged to those fanatic anti-Semites who participated in or approved of the pogroms against the Jews or who derived benefit from these actions; Funk always declined that sort of thing. The explanation for this fact is to be found not only in his natural disposition and the milieu in which he grew up but also in his decades of journalistic activity mostly in that part of the press, which dealt with economic policies and, consequently, kept him in continuous touch with the valuable circle of Jews in economic life. Experts know and speak highly about it even today, that Funk, at that time already, showed an attitude that was free of all antisemitism and appeared to be far more friendly towards the Jews than hostile.

H0179 - 0068

H0179-0069

It is somehow tragic, that in spite of this, Funk's name in this trial has been repeatedly connected with the decree of November 1938, by which the elimination of Jews from economic life was carried out. Whether he liked it or not, all questions which concerned the treatment of Jews in the economic life of Germany were under the jurisdiction of his department as Minister for Economy. As an official it was his duty to issue the necessary decree for execution.

This must surely have been very difficult, especially for Funk, in view of his tolerant attitude. He had, at that time, been a state official of the Reich Propaganda Ministry and the Ministry for Economy for 8 years already, and yet the prosecution could not ascertain a single case during that time, in which Funk had shown an anti-semitic attitude, where he had incited people towards the Jews. It could not cite a single instance when he would have approved of, or preached violence, terror or injustice. On the contrary, we know from statements of various witnesses, that Funk interceded, during all those years, on behalf of Jewish fellow-citizens in those years, time and again that he was concerned about them, and in their interests sought to alleviate hardships, to prevent encroachments on their rights and to rescue the existence of human beings, even if they were Jews or political opponents.

It is, therefore, not too surprising, that this man of rich experience in the economic field, this man of far-reaching knowledge, with his outspoken tolerant views, was most painfully affected when, on 10 November 1938, he had to witness the destruction of Jewish homes and shops in Berlin. One incoming report upon another confirmed the fact, that Goebbels and his clique exploited the excitement of the populace over the assisination by a Jew of a German, commanded such orgrams through Germany, and that the outrages led not only to the destruction of Jewish property, but also to the murder of many Jews, and to the persecution of many thousands of innocent fellow-citizens.

H0179 - 0070

The affi-davit of his Ministerialrat Kallus (Document Book Funk No.15 9 December 1945), and that of Frau Luise Funk (5 November 1945, Document Book Funk No.3), prove clearly, that Funk condemned such excesses to the utmost and, that he called them swinish in the face of minister Dr. Goebbels, in great excitement, and in the event of a repetition of such he threatened to resign his office. He had, at that time already, told the almighty Goebbels into his face that one had to be ashamed of being a German.

All this expressed the just indignation of a man, who for decades had exerted himself for moderation towards the Jews and political opponents and had thus earned many a letter of appreciation, a man who had fought fro years to prevent any terror to raise the standard of German economic life, and who now, in one single night, saw all his efforts frustrated by the brutal fanaticism of a Dr. Goebbels.

Funk himself, during his interrogation clearly described how, from entering upon his office as a Minister of the Economy from February 1938, he was being pressed continuously byGoebbels and Dr. Ley to eliminate the Jews also, such as in 1933 they had been eliminated from cultural life, from the economic life.

The witness Dr. Naylor stated here that also Himmler reproached Funk of this. Funk himself as a witness stated how, in those years repeated difficulties arose with the workers stirred up by propaganda who sometimes no longer wanted to work with Jewish managers or did not dare to do so, and how, under the pressure of these conditions, it occurred that numerous Jewish business owners sold their business, and quite often at ruinous prices, to people who, to the Minister of the Economy Funk, appeared to be entirely unfit for acquiring and managing of such businesses. Time and again Funk tried to oppose this irresistible condition. He strove continuously to slow down, at least, this process of aryanization; to provide for a suitable and just settlement for the Jewish business owners; and to make possible their emigration from Germany

H0179-0071

toghor with allowing them to take along their belonings. But day after day Funk came to recognize more and more that he was too weak to stop this movement, and that the radical elements around Dr. Goebbels and Dr. Ley increasingly won the upper hand, and in so doing unfortunately even were able to lean on Hitler's authority. The latter, that is, Hitler, was in the course of time won more and more for the radical treatment of the Jewish question by a few irresponsible advisers who today do not sit in the prisoners' dock.

Into this fight between Funk and other considerate people, on the one side, and Goebbels and Ley on the other side, the events of 9 November 1938 burst which, as Dr. Goebbels himself later admitted toward Fritsche, were aimed directly against the person of the defendant Funk who thereby was to be confronted with accomplished facts. And through this action of November 1938, Dr. Goebbels actually reached his goal, as the witness Landfried testified. Goebbels was in the future able to refer to Hitler's own order that the Jews be completely excluded from the German economic life, although Funk, as the minister concerned, repeatedly pointed to the relations with foreign countries from which the German Reich and its economy were dependent.

The orders necessary for carrying out this program were given by Goering, in his capacity as a Plenipotentiary of the Four Year Plan. Namely, upon Hitler's direct orders. Funk never had any doubt that thereat Goering also was to a certain degree only a figure-head because he always knew Goering as the man who just in the jewish question had previously rejected extreme radicalism. This conception of Funk was shared by wide circles of the German people and it proved to be correct in the fateful Goering meeting on 12 November 1938, Document 1816-PS. This document has been mentioned here repeatedly.

At a preceding meeting, a meeting which preceded that of 12 November 1938, Goering sharply condemned the terror acts which had occurred and declared to the Gauleiters present that he would make responsible every

H0179 - 0072

Gauleiter personally for the acts of violence committed in his district. But what was the good of that? Goebbels, in the course of the second meeting, the minutes of which have been submitted to the tribunal, under No. 1816-PS, succeeded after all with his radical demands; from the result of this meeting, finally, also Funk had to come to the conclusion that the complete elimination of the Jews from German economic life could simply not be delayed any longer because the authorative circles had become far too fanatic. It became evident to Funk that legal decisions would now have to be taken if the Jews were to be protected from further acts of terror, plunder and violance and if they were to get at least some proper compensation. During this Goering meeting of 12 November 1938, Funk expressed himself again and again. Due to the efforts made by the defendant Funk supported by Goering, the Jewish businesses were first reopened, the whole procedure was taken out of the arbitrary hands of local agencies and put on a legal basis all through Germany. And, finally, this liquidation was spread over a certain period of time in order to gain time for carrying out this action. If the minutes of the Goering meeting of 12 November 1938 are read carefully, then one will over and over again be able to find inspite of its incorrect and incomplete formulation, distinct clues which prove Funk's moderating influence; namely, his urging, mentioned in the minutes repeatedly, to reopen the Jewish stores, and his (Funk's) proposal to let the Jews retain at least their securities and finally his rejection of Heydrich's demand to place the Jews in ghettos. It is a fact proven by the minutes of 12 November 1938, beyond doubt that Funk who opposed Heydrich 's proposal and said, quote: "One did not need ghettos. The Jews could move closer together among themselves. The life of 3 million Jewish people amongst not less than 70 million Germans could surely be regulated without ghettos."

Funk thereby wanted to prevent the Jews from being interned in ghettos. Of course, at that time Funk did not succeed completely in his point of view. And so, for example, his proposal to let the Jews keep their securities was refused although Funk called attention to the fact and that can also be seen from the minutes that a realization of the Jewish securities would suddenly flood the German stock market with securities valued at half a billion there-

H0179 - 0073

fore would inflict serious consequences upon the German stock market. Decisive for the judgment of the defendant Funk is his obvious effort to save for the Jews what could be saved under the given circumstances, and thereby we must not lose sight that in all those measures Funk acted only in his capacity as Minister of the Economy, that is, as an official, who merely gave the order to execute a command which Goering, as Plenipotentiary of the Four-Year-Plan, had issued on Hitler's orders. Funk thereby found himself on the very same position of constraint, as for example, the Reich Finance Minister Graf Schwerin-Krosigk, who, at the time, had to issue the orders regarding the punitive levy of 1 billion Reichsmark to be payed by the Jews or as theReich Minister of Justice and the Reich Minister of the Interior, both of whom had issued analogous orders for execution in their respective sphere of business.

It is now for theTribunal to give a fundamental ruling on the difficult legal question whether an official of a State, the government of which has been legally recognized by all governments of the world, is liable to legal punishment for putting into effect a law, and I emphasize, a law, which has been passed in accordance with the legal order of this State. This legal problem is entirely different from the other question whether or not the fact that an official order when given by a superior can serve as an excuse. I shall not treat this legal question because I shall leave this to theother members of the defense. I shall only treat here whether an official is liable to punishment if he puts into effect a law which has been passed by the State and confirmed aslegal, and that is entirely different from that which is dealt with by the Charter.

Gentlemen, since this has not been dealt with before, I have to state the following:

Our sense of justice, our natural sense of justice, fully admits that a citizen, an official, or even a soldier, cannot defend himself by pointing to the official order, given to him by his superior if this order obviously implies an illegal act especially, a crime,

H0179 - 0074

and if the subordinate under the existing circumstances and in due consideratio of all the accompanying facts realizes or should realize that the official order is contrary to the law. If this latter prerequisite exists, in other words, if I may qualify that, one may in general fully approve that the right i not accorded to the subordinate to refer to an official order of his superior as an excuse and to maintain that he was only carrying it out. In that respect this stipulation of the Charter does not practically contain anything new, but only the confirmation and further development of legal principles which to a varying extent are recognized in the penal codes of most of the civilized nations to-day. A certain precaution, however, seems to be indicated in this matter, as on the other hand it should not be forgotten that obedience to the orders of one's superiors is and must in future remain the foundation of every government in all nations if an orderly functioning of the state administrative apparatus is to be safeguarded, and that it is very dangerous if the civil servant himself is to decide for himself whether he should keep his oath of allegiance.

But, gentlemen, in our case something different is involved: Here we are concerned with the obedience of the citizen and especially of the civil servant such as Funk at that time, to the law of the state which was lawfully promulgated in accordance with the constitutional rules of this state. If we want to obtain a just and correct answer to this question, a question which has not been treated until now, it will be pertinent to disregard entirely the German conditions and to pose the question what the decision would be if the civil servant of another, not German country, carries out a law. Let us assume for instance, some foreign country embracing a minority promulgated in accordance with its constitution a law according to which all members of this minority are to be exiled from its territory or the property of such inhabitants is to be confiscated for the benefit of the state or that the large agricultural estates of such inhabitants are to be turned over to the state or to be partitioned among other citizens. Let us assume that such a case exists and let us ask ourselves now does the civil servant in this nation really commit a crime if he carries out this lawful order? Is it really the duty of the official who is in charge of the execution of this law, or for that

H0179-0075

matter has he even the right to refuse obedience to the law and to declare that in his personal opinion the law concerned was a crime against humanity? Would to-day, gentlemen, in such a case, any state grant its civil servants the authority to examine at all whether the promulgated law is contrary to the principles of humanity or to the fluctuating norms of international law? What state would tolerate that its civil servants based upon this argument refuse the execution of a promulgated law?

I shall pass over the passage on Page 53 at the top of the page, and I continue with the second paragraph on Page 53.

The Tribunal will have to decide these legal problems. But Funk in his defense may point out the fact that according to his entire ideology and to his entire background it was especially difficult for him, to issue these decrees for execution, although he believed he was only doing his duty as a civil servant.

In this connection I wish to remind of Funk's circular of 6th February 1939 (3498 PS., Trial Brief Funk, page 19), where he emphasizes to his official that they had the duty to safeguard "in every way an unobjectionable execution" and where he mentally already declines

H0179-0076

the personal responsibility for these measures by expressly emphasizing : "To what extent and speed the authorities given by the Four Years' Plan are to be used will depend on the decisions made by me in accordance with the directives of the Plenipotentiary for the Four Year's Plan". This special reference of the defendant Funk to the legal decrees of the Four Year's Plan which was authorized to promulgate laws, originated in the desire of the defendant to express formally and solemnly, and to establish for times to come that in issuing the decrees for the execution, he fell, in the last analysis, victim to his obedience to the state, victim to his loyalty to the laws of the state to which he had sworn allegiance.

Especially in Funk's circular of 6 February 1939, mentioned before in Trial Brief page 19, qualms of conscience are clearly expressed which had gripped Funk in those days, those qualms which, during his interrogation by an American officer on 22 October 1945, resulted in a complete nervous collapse so that Funk could not suppress his tears any more and told the interrogating officer:"Yes, I am guilty, I should have resigned at that time". These same qualms of conscience occupied the defendant during the entire trial, and we remember that Funk in the session of 6 May 1946, when this point was discussed, was so deeply shaken, that he could hardly continue to talk and that he finally declared, here, before you, gentlemen, that at this moment he fully realised that from here the disaster had started on its way, until those horrible and frightful things which we have learned here and a part of which he learned already during his imprisonment, that is the atrocities of November 1938. He felt, as he said during his interrogation on 22October 1945, "a deep shame and a heavy guilt before himself", and he still felt it to day in the same way; but he had put the will of the state, the laws of the state, above his own feelings and his warning voice, for he as a civil servant was duty bound to the state. He felt all the more bound, as these legal measures were necessary first of all for the protection of the Jews in order to save them from being completely without any rights and from further despotism and force".

Still to-day, Funk feels that it was a terrible tragedy that he of all persons was charged with these things, he who never during his entire life said a spiteful word against a Jew but had, wherever he could, always worked for tolerance and equality even towards Jews.

H0179-0077

Funk, on his interrogation on October 22nd, 1945, said: "I am guilty", and it is not intended to investigate here whether the defendant, when saying this, thought in any way of a criminal or only of a moral guilt which he saw in the fact that he remained in an office which compelled him to carry out laws which were incompatible with his own philosophy of life. Funk was not in a position to decide for himself the complicated legal question, whether an official of state, which had been internationally acknowledged, can be punished at all when doing nothing else but executing laws which had been passed in accordance with the laws of this state. He, the defendant Funk, did not see any "guilt" of his in the fact that he had signed, in November 1938, the executive regulations, as this had been his duty as an official. Rather, he considered himself guilty because he had remained a member of the government, although he found the acts of terror which had occurred intolerable and abhorred them; he did not get into the "conflict of conscience" whereof he spoke when he was interrogated because he acted according to the laws which he considered as necessary under the then prevailing conditions but he got into such a conflict of conscience because he had not, in such a difficult situation, listened to the voice of his conscience and had not resigned his ministerial office. But the decisive motive for his attitude and his final decision to stay in the office was surely no material. His renown as a journalist and his abilities in this respect would have made it easy for him to find another suitable position. Much is to be said for the opinion that the defendant was kept in office above all by the thought that his resignation would improve nothing, that on the contrary the administration would get still more radical under an unsuitable, fanatical successor, while he could hope, if staying in office, to alleviate much distress.

These considerations, which may have guided the defendant Funk in the first place, were certainly correct up to a certain point.

H0179 - 0078

His secretary of state Dr. Landfried at least has stated as witness, that further on, too, Funk time and again had serious misgivings concerning this action against the Jews of November 1935, and very strongly showed his disapproval of all excesses and infringements of law committed by various government agencies in the course of execution. Funk could talk openly to his confident Landfried, and he often complained to him that he had not had the power to prevent such excesses. But, as he said to Landfried: "We of the Ministry of Economy should take particular care that nobody is getting unwarranted enrichment out of the Jews on the occasion of the aryanization of business firms, i.e., of their transfer into non-Jewish hands." And ministerial councillor Kallus stated, in his deposition of April 19th, 1946, the various measures which were taken at that time by Funk to protect the interests of Jewish business owners, and Kallus told us too, that Funk even personally endeavoured to ensure that his orders were correctly carried out by subordinate authorities.

Sense of duty, gentlemen, on the one hand and human feeling on the other were the motives, accordingly, which made the defendant stay in office and brought him thus into a situation he is charged with today as being the result of criminal action.

I come now to a new chapter and I have altogether about fifteen pages. It is six minutes of four --

THE PRESIDENT: Can you finish it by that time, Dr. Sauter?

DR. SAUTER: Well, there are fifteen more pages. If I figure it correctly it will take about a half hour.

THE PRESIDENT: We will adjourn at this time.

(The Tribunal adjourned until 13 July 1946, at 1000 hours.)